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The Golden Hand No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations

Intermountain
Region

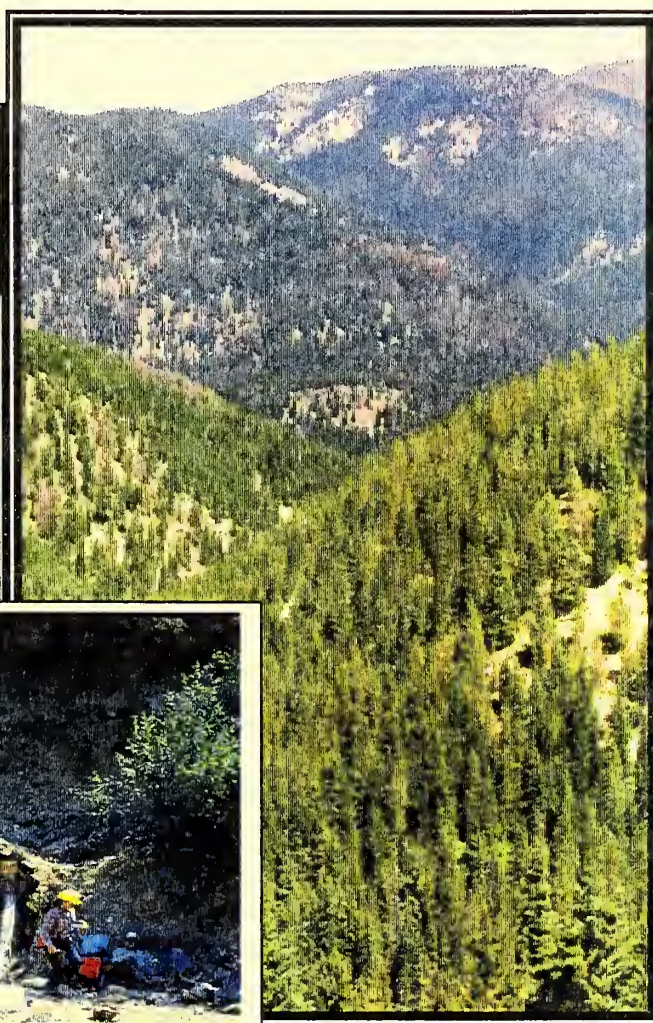
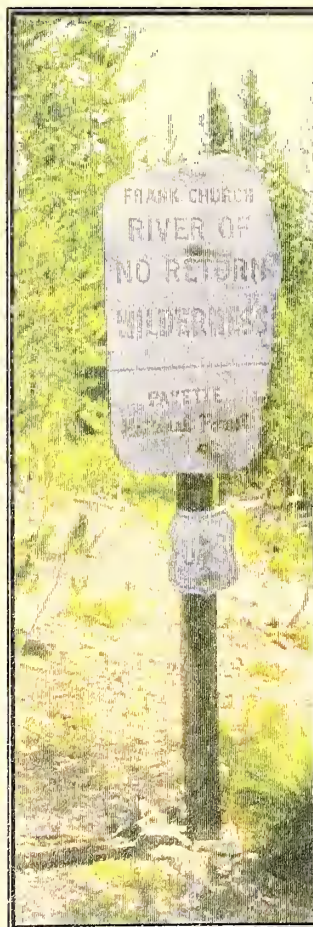
Payette National
Forest

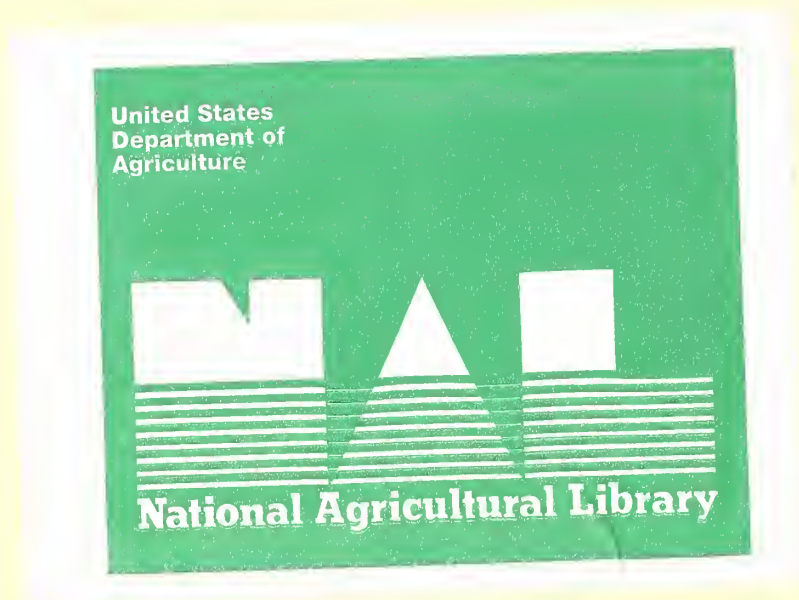
Krassel Ranger
District, McCall, Idaho

May 2003

Final Environmental Impact Statement

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United States
Department of
Agriculture

Forest
Service

Payette
National
Forest

PO Box 1026
McCall ID 83638
208 634-0700

File Code: 1950-3

Date: May 1, 2003

U.S.D.A., NAL

DEC 14 2004

CATALOGING PREP

Dear Interested Citizen:

Enclosed is a copy of the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for the Golden Hand No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations. They were completed to meet the requirements of federal law, as well as Judge Winmill's Court Order of August 9, 2002.

The selected alternative is Alternative C: Proposal Modified for Resource Protection. The decision allows American Independence Mine and Minerals, Inc. (AIMM) to conduct mineral development operations on Golden Hand No. 3 and 4 lode mining claims. This alternative includes several elements to protect surface resources: reduced road construction, increased road improvements, no trenching, no residential occupancy, a sequenced drilling scenario, mitigation measures, and monitoring. The decision is based on the analysis in the Environmental Impact Statement (EIS). The EIS analyzed three action alternatives, including AIMM's proposed plan (Alternative B) to develop the claims.

This decision is subject to appeal. AIMM may appeal the decision under either 36 CFR Part 215, or 36 CFR Part 251. Other parties may appeal the decision under 36 CFR Part 215. A notice of appeal must be in writing and clearly identify either 36 CFR 215 or 36 CFR 251. Appeals filed under 36 CFR 251 must be filed by June 16, 2003. Appeals filed under 36 CFR 215 must be filed by June 23, 2003. Any appeal must be addressed to: Appeal Deciding Officer, USDA Forest Service, Intermountain Region, 324 25th Street, Ogden, Utah, 84401, fax (801) 625-5277.

Sincerely,

MARK J. MADRID
Forest Supervisor

Enclosure



The Golden Hand No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations

Final Environmental Impact Statement

**USDA- Forest Service
Payette National Forest
Krassel Ranger District
Idaho and Valley Counties, Idaho**

May 2003

Lead Agency: USDA Forest Service

Responsible Official: Mark Madrid, Forest Supervisor
Payette National Forest
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District Ranger Team Leader
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Abstract: American Independence Mine and Minerals, Inc. (AIMM) proposes to develop minerals on two valid mining claims on a portion of the Golden Hand Mine site in the Frank Church-River of No Return (FC-RONR) Wilderness. The Final Environmental Impact Statement (FEIS) analyzes four alternatives for the Golden Hand No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations. The alternatives include No Action, the proponent's proposed action (Alternative B), the proposal modified for resource protection (Alternative C), and the proposal modified for increased resource protection with non-motorized access (Alternative D). The preferred alternative is Alternative C, which includes modifications to AIMM's proposed plan of operations. These modifications include: reduced road construction in the Wilderness, increased road improvements, use of Best Management Practices, no trenching, no residential occupancy, and a sequenced drilling scenario. This alternative would require two one-time, site-specific, non-significant amendments to the Forest Plan.

The Golden Hand Mine site is located in the FC-RONR Wilderness on the Krassel Ranger District, Payette National Forest, Idaho County. The access roads are in Valley County.

This is a "short form" Final EIS permitted under the CEQ Regulations for implementing the National Environmental Policy Act (NEPA). These regulations state: "If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement" (40 CFR 1503.4 [c]). This "short form" Final EIS is also consistent with CEQ regulation for reducing paperwork (40 CFR 1500.4[m]).

Final Environmental Impact Statement

Table of Contents

Appendix F- Errata

SUMMARY OF THE DEIS	F-1
CHAPTER 1- PURPOSE AND NEED	F-1
CHAPTER 2- ALTERNATIVES	F-3
CHAPTER 3- AFFECTED ENVIRONMENT.....	F-7
Minerals and Geology	F-7
Roads and Access Management.....	F-10
Wilderness Resource.....	F-10
Soil and Water Resources	F-12
Fisheries Resource	F-14
Wildlife Resource.....	F-18
CHAPTER 6- REFERENCES	F-20
CHAPTER 7- ACRONYMS AND GLOSSARY	F-22
APPENDIX E- MONITORING PLANS.....	F-22

Appendix G – Comment Letters

Appendix H - Response to Comments

Section 1. Responses to Federal, State, Local, and Tribal Governments

Section 2. Responses to comments by project proponent

Section 3. Responses to comments by other interested parties (by topic)

Appendix I – Public Involvement

This Final Environmental Impact Statement (FEIS) incorporates the Golden Hand No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations Draft Environmental Impact Statement (DEIS) by reference. Appendix F-Errata addresses changes to the DEIS that, in addition to Appendices G, H, and I, make up this FEIS. This FEIS incorporates by reference the entire Project Record (40 CFR 1502.21). The Project Record, including the Resource Specialist Reports, includes the detailed data, methodologies, analyses, conclusions, maps, references, and technical documentation relied upon by the Resource Specialists.

APPENDIX F. ERRATA

APPENDIX F

ERRATA

The following errata summarizes clarifications, updates, and/or corrections made to the Golden Hand No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations Draft Environmental Impact Statement (DEIS) (2003). An errata is appropriate for a Final Environmental Impact Statement (FEIS) that has minor changes from the DEIS (40 CFR 1503.4[c]). The organization of the errata items follows the formatting in the DEIS.

SUMMARY OF THE DEIS

Page S-2, fourth bullet. Replace the bullet, “Haul a maximum of 10 dump truck loads of the extracted ore 12 miles to the Walker Millsite for bulk metallurgical testing using a 14-cubic yard tandem-axle truck” with: “Use a 14-yard tandem-axle dump truck to haul a maximum of 10 dump truck loads (over the 10 year operating period) of the extracted ore to the Walker Millsite for bulk metallurgical testing.”

Page S-6, second paragraph, first sentence. Replace, “twelve” with “eleven” in the sentence, “This alternative does not include Forest Plan management requirements or specific mitigation measures, and would require twelve one time, site specific, non-significant Forest Plan amendments.”

Page S-6, sixth paragraph, second sentence. Delete, “, and Wilderness Plan direction” in the sentence, “These amendments would be required for non-compliance with standards and guidelines for visual resources, fisheries, and Wilderness Plan direction.” Add “and” between “visual resources” and “fisheries.”

Page S-6, sixth paragraph, first sentence. Replace, “three” with “two” in the sentence, “Alternative C would require three one time, site specific, non-significant amendments to the Forest Plan that would not change overall Forest Plan goals, objectives, Desired Future Conditions, or associated outputs.”

CHAPTER 1- PURPOSE AND NEED

Page 1-3, eighth bullet. Replace the bullet, “Haul a maximum of 10 dump truck loads of the extracted ore 12 miles to the Walker Millsite for bulk metallurgical testing using a 14-yard tandem-axle ore truck” with: “Use a 14-yard tandem-axle dump truck to haul a maximum of 10 dump truck loads (over the 10 year operating period) of the extracted ore to the Walker Millsite for bulk metallurgical testing.”

Page 1-6, Figure 1-2, Project Area Map. Add a, “Road #371” label to the road that lies adjacent to the “Payette National Forest” label. Add a, “Road #373” label to the road that lies between the hairpin turn and Pueblo Summit (see the revised map in the Record of Decision).

Page 1-12, List of Non-significant Issues. Add, “12. Air Quality” to the list of non-significant issues.

Page 1-13, add a paragraph under **Non-significant Issue #4: Economics**. Add, “The economic effects to a variety of user groups (including AIMM, independent miners, Outfitter and Guides, and packers) was determined to be negligible. Most operations of Big Creek Lodge and Outfitters and Elk Springs Outfitters currently take place during the fall hunting season. The proponent’s proposed action for the mining operation states “a most likely case would be operations between early July and mid-September before hunting season starts.” Under the action alternatives, if AIMM operates prior to September 15, the impact to the two current outfitting operations would be minimal.”

Page 1-13, third paragraph, under **Non-significant Issue #6: Recreation**. Delete the second sentence, “Essentially no public comments were received regarding the effects on recreation opportunities outside of Wilderness”. Replace with, “In response to scoping, no comments were received regarding the effects on recreation opportunities outside of the Wilderness; however, in response to the DEIS, comments were received by Outfitters and Guides and other interested parties regarding access conflicts.”

Page 1-13, after the third paragraph. Add: “Additionally, approximately 252 round trip vehicles would be added to the existing use between the Walker Millsite and Pueblo Summit Trailhead per year over a 10 year period. This would be the equivalent of approximately two round trips per day of pick up trucks, and one round trip per year for the larger equipment (bulldozer, backhoe, road grader, drill, compressor, and 14-yard tandem axle truck). There could be some disruption of pack strings, bikers, and other recreationists traveling along these roads; however, these impacts would be sporadic and difficult to quantify and describe reliably.”

Page 1-15, at the end of the non-significant issues section. Add, “**Non-significant Issue #12: Air Quality, Summary of Issue Analysis:** The FC-RONRW is a Class 2 airshed. A recently completed compilation of air inventories ‘has shown air quality to be within the Clean Air Act (as amended in 1977 and 1990) standards for Class 2 airshed and that management is sufficient to protect the air quality resources (USDA 2003).’ No solid or liquid wastes, as defined by Idaho’s Solid Waste Management Rules, will be buried, burned, or otherwise disposed of on-site per Idaho’s Rules for Control of Air Pollution IDAPA 58.01.01.603.”

Page 1-20, second paragraph, first sentence. Replace, “IDWR administers water rights in the State of Idaho” with “Water rights and uses are administered by the Idaho Department of Water Resources under state law.”

Page 1-20, second paragraph, delete the second sentence under the Idaho Department of Water Resources (IDWR); “Compliance with state requirements for protection of waters within Idaho (Idaho Administrative Code IDAPA 58.01.02) means ‘The existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected’; and, ‘...wherever attainable, surface waters of the state shall be protected for beneficial uses, which for surface waters includes all recreational use in and on the water surface, and the preservation and propagation of desirable species of aquatic life’.”

Page 1-20, third paragraph, first sentence. Add, “has review authority and” after “IDEQ” in the sentence, “The IDEQ is responsible for implementing environmental protection laws and programs for the state of Idaho.”

Page 1-20, third paragraph, after the first sentence. Add, “Compliance with state requirements for protection of waters within Idaho (Idaho Administrative Code IDAPA 58.01.02) means ‘The existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected’; and, ‘...wherever attainable, surface waters of the state shall

be protected for beneficial uses, which for surface waters includes all recreational use in and on the water surface, and the preservation and propagation of desirable species of aquatic life’.”

CHAPTER 2- ALTERNATIVES

Page 2-3, fifth bullet. Replace the fifth bullet, “Haul a maximum of 10 dump truck loads of the extracted ore 12 miles to the Walker Millsite for bulk metallurgical testing using a 14-yard tandem-axle truck” with: “Use a 14-yard tandem-axle dump truck to haul a maximum of 10 dump truck loads (over the 10 year operating period) of the extracted ore to the Walker Millsite for bulk metallurgical testing.”

Page 2-8, third bullet. Delete the bullet, “Amend Forest Plan standards and guidelines (p. IV-351) that incorporate direction from the Frank Church River of No Return Wilderness Management Plan (1985, as amended), to allow for activities that do not meet Wilderness Plan direction.”

Page 2-9, fourth bullet. Add, “(see Appendix D)” to the end of the sentence, “All activities would include the use of Best Management Practices (BMPs)”.

Page 2-10, second paragraph, after the eighth sentence. Add, “All roadwork improvements on FR 371 and 373 would need to be completed by September 15th of the first year of operations.”

Page 2-14, first paragraph, after fifth sentence. Add the sentence, “Forest Service Minerals personnel would work with AIMM to site drill locations.”

Page 2-14, first paragraph, seventh sentence. Replace the sentence, “The Forest Service would approve the additives used for drilling.” with “Additives used for drilling would need to be approved by the Forest Service.”

Page 2-14, first paragraph, end of the paragraph. Add, “The volume of waste rock to be added to the dumps would be limited to that which would remain on claims No. 3 and No. 4. This is estimated to be approximately 300 cubic yards of waste rock.”

Page 2-14, fourth paragraph, second sentence. Delete, “running” from the sentence: “Both the bulldozer and grader would be restricted to a running blade width of 10 feet or less.”

Page 2-15, first paragraph, first sentence. Add, “at the end of each operating season” to the sentence, “Any excess fuel must be removed from the claims in the same manner”.

Page 2-15, first paragraph, fourth sentence. Add, “, and must be removed from the claims at the end of each operating season.” to the end of, “Other hazardous materials (liquid drill fluid additives, anti-freeze) must also be stored in containment if outside of vehicles.”

Page 2-15, third paragraph, last sentence. Replace, “Any milling or processing of the timber would occur outside the Wilderness” with “Any milling or processing of timber requiring more than use of a handheld chainsaw must occur outside of the FC-RONR Wilderness.”

Page 2-15, fourth paragraph, after the last sentence. Add the sentence, “No solid or liquid wastes, as defined by Idaho’s Solid Waste Management Rules, would be burned, buried, or otherwise disposed of on-site and must be removed from National Forest System lands.”

Page 2-16, header above the sixth paragraph. Add, “, **Mitigation, and Information**” to “**Monitoring**”.

Page 2-16, sixth paragraph, second sentence. Replace, “Appendix F” with “Appendix E” in the sentence “Monitoring activities are outlined in Table 2-5 and described in detail in Appendix F.”

Page 2-16, sixth paragraph, after the second sentence. Add, “Prior to project implementation, a Quality Assurance Project Plan for the monitoring program will be developed following the guidelines established in the EPA publication QA/G-5 *Guidance for Quality Assurance Project Plans* (EPA 2002).”

Page 2-16, sixth paragraph, add a new paragraph. Add, “An interpretive display would be placed at the Pueblo Summit Trailhead for the duration of the operation to inform the public of activities occurring at the mine site. A sign would also be posted at the Trailhead warning the public that any unauthorized motorized access would result in a fine and/or prosecution.”

Page 2-17, second paragraph, second sentence. Add, “(see D-19)” to the end of the sentence, “Drill holes constructed during the operating season must be closed and reclaimed at the end of the season.”

Page 2-17, second paragraph, after the second sentence. Add, “The pit toilet would be backfilled with soil at the end of each operating season and mounded to account for settling.”

Page 2-17, third paragraph, first sentence. Replace the sentence, “Final closeout would be conducted prior to completion of operations”, with the following two sentences: “To the extent possible, reclamation would be concurrent with operations. Final reclamation would begin within one year of the conclusion of operations unless a longer time is allowed as described at CFR 36 228.8g.”

Page 2-17, third paragraph, fourth sentence. Replace, “restoration” with “reclamation” in the sentence, “Stockpiled topsoil will be applied to disturbed sites to improve success of restoration efforts.”

Page 2-17, third paragraph, last sentence. Add, “, as described under errata page 3-43” to the sentence, “The gravel site at the Werdenhoff Mine would also be reclaimed.”

Page 2-17, after the third paragraph. Add the following paragraph: “After closure, all surface disturbance within the FC-RONR Wilderness (roads, drill pads, fords, mine portals) would be restored to the approximate original slope contour. Mine waste dumps would not be fully recontoured. FS Trail #013 would be reduced to an 18-inch trail.”

Page 2-17, fourth paragraph. Replace, “three” with “two” in the sentence: “Alternative C would require three amendments.”

Page 2-17, third bullet. Delete the bullet that reads: “Amend Forest Plan standards and guidelines that incorporate direction from the Frank Church River of No Return Wilderness

Management Plan (1985, as amended), to allow for activities that do not meet Wilderness Plan direction.”

Page 2-20, first paragraph, third sentence. Add, “using non-motorized, non-mechanized tools” to the end of the sentence, “All trail clearing in the Wilderness would be done by hand.”

Page 2-20, first paragraph, after the fourth sentence. Add, “All roadwork improvements on FR 371 and 373 would need to be completed by September 15th of the first year of operations.”

Page 2-20, second paragraph, after the fifth sentence. Add the sentence, “Forest Service Minerals personnel would work with AIMM to site drill locations.”

Page 2-20, second paragraph, end of the paragraph. Add, “The volume of waste rock to be added to the dumps would be limited to that which would remain on claims No. 3 and No. 4. This is estimated to be approximately 300 cubic yards of waste rock.”

Page 2-21, fourth paragraph, after the sixth sentence. Add the sentence, “No solid or liquid wastes, as defined by Idaho’s Solid Waste Management Rules, would be burned, buried, or otherwise disposed of on-site and must be removed from National Forest System lands.”

Page 2-22, header above the sixth paragraph. Add, “, **Mitigation, and Information**” to “**Monitoring**”.

Page 2-22, sixth paragraph, second sentence. Replace, “Appendix F” with “Appendix E” in the sentence, “Monitoring activities are outlined in Table 2-5 and described in detail in Appendix F.”

Page 2-22, sixth paragraph, after the second sentence. Add, “Prior to project implementation, a Quality Assurance Project Plan for the monitoring program will be developed following the guidelines established in the EPA publication QA/G-5 *Guidance for Quality Assurance Project Plans* (EPA 2002).”

Page 2-22, after the sixth paragraph, add a new paragraph. Add, “An interpretive display would be placed at the Pueblo Summit Trailhead for the duration of the operation to inform the public of activities occurring at the mine site. A sign would also be posted at the Trailhead warning the public that any unauthorized motorized access would result in a fine and/or prosecution.”

Page 2-23, second paragraph, second sentence. Add, “, using primitive methods (non-mechanized, non-motorized)” to the end of the sentence, “Drill holes constructed during the operating season must be closed and reclaimed at the end of the season.”

Page 2-23, second paragraph, second sentence. Add, “The pit toilet would be backfilled with soil and mounded to account for settling at the end of each operating season.”

Page 2-23, third paragraph, first sentence. Add, “, using primitive methods (non-mechanized, non-motorized)” to the end of the sentence, “Close out would be conducted prior to the completion of operations.”

Page 2-23, third paragraph, after the second sentence. Add, “Any earthwork done to create level drill pads would be recontoured. The abandoned roadbeds and FS Trail #013 would remain.”

Page 2-23, third paragraph, after the sixth sentence. Add, “The abandoned roadbeds would remain.”

Page 2-26, Table 2.5. Monitoring Plan Summary. Replace, Table 2.5 with the table below.

Table 2.5. Monitoring Plan Summary

Resource	Item	Frequency/Duration	Personnel
Minerals and Geology	Compliance with approved plan of operations	Daily over the life of the project	Forest Minerals personnel
	Verify effectiveness of BMPs	Monthly	
Roads and Access Management	Monitor barriers around the entry gate to the Wilderness to ensure compliance	Frequently during operations	Forest Minerals Specialists and Wilderness Specialists
	Compliance with vehicle permit requirements (Alt. B and C only)	Frequently during operations	Forest Minerals Specialists and Wilderness Specialists
Wilderness	Compliance with approved motorized and mechanized uses-including no. of vehicles accessing the Wilderness	Each season over the life of the project	Wilderness Specialist
	Visitor road use monitoring on Smith Creek Road	Each season over the life of the project	Wilderness Specialists
	Compliance with approved plan of operations-inspect camping area for compliance with Leave No Trace techniques (Alt. B and D only)	At least three times per season over the life of the project	Wilderness Specialists
	Monitor visual and audio impacts on wilderness experience	Each season over the life of the project	Wilderness Specialists
Soil and Water	Compliance with the Clean Water Act	Beginning and end of each operating season over the life of the project	PNF personnel
Fisheries	Compliance with PACFISH standards and guidelines	Prior and during roadwork and during mining operations and	Fisheries Biologist/Technician and Hydrologists

Resource	Item	Frequency/Duration	Personnel
	Monitoring for presence of listed fish species and evidence or spawning. Compliance with Biological Opinion	reclamation, periodically throughout the spawning seasons of listed fish, and prior to and during use of ford on NF Smith Creek	
Noxious Weeds	Noxious weed eradication and control	Annually and for five years after end of operations	PNF personnel
Cultural Resources	Compliance with the MOA and Sec. 106 of the NHPA	Two times over the life of the project	Heritage Program Manager

Page 2-28, Table 2-6, under final reclamation for Alternatives C and D. Add, “Reclaim gravel site at Werdenhoff Mine” to the end of the paragraph under Alternative C and D.

CHAPTER 3- AFFECTED ENVIRONMENT

Minerals and Geology

Page 3-10, after the third paragraph, add the following new paragraphs: “There are no active mining claims in the Coin Creek or Beaver Creek drainages, which were withdrawn from mineral entry in their entirety on December 31, 1983, by the Central Idaho Wilderness Act. This means no claims may be located in the future. The nearest active mining claims in the Frank Church-River of No Return Wilderness (FC-RONR Wilderness) are in the Thunder Mountain area, approximately 20 miles from the Golden Hand Mine site in the Monumental and Marble Creek watersheds.”

“Numerous active mining claims (where the annual maintenance fees are current) exist in the Logan Creek, Smith Creek, Government Creek, and Big Creek drainages outside the FC-RONR Wilderness.”

Page 3-10, fifth paragraph, delete the sentences, “Jack Walker also owns a small, 50-ton per day, gravity mill on NFS land in Logan Creek. The Fourth of July has provided ore for milling but the mill has never operated on a continuing basis. The mill is covered by a plan of operations approved by the Forest Service in 1990.” Replace with, “The Walker Millsite is an independent millsite that has a plan of operations that was approved in 1990. The mill consists of a 50 ton-per-day ball mill, spiral jigs, and a small flotation circuit. Mill tailings are deposited in a 50 feet wide, by 100 feet long, by 8 feet deep impoundment. The Walker Mill is authorized to accept ore from any mine in the area. Processing of the limited quantity of bulk samples (60-140 cubic yards) proposed for removal at the Golden Hand Mine site requires no additional authorization.”

Page 3-18, after the second paragraph. Below, “3. Conduct non-surface disturbing geophysical traverses” add a space and add, “No change would occur in the level of milling activity at the Walker Millsite.”

Page 3-19, the end of the first paragraph. Add, “Bulk samples would be removed from the Golden Hand Mine site for test milling at the Walker Millsite. The milling process involves only the gravity mill and flotation circuit, and no additional chemical beneficiation (e.g. cyanidation) (Mashburn 1988).”

Page 3-21, fourth paragraph. After the sentence, “The limited underground work in Alt B would result in minimal impact to surface resources and would be reasonably incident to mining (Abbey 2003).”; add, “Bulk samples would be removed from the Golden Hand Mine site for test milling at the Walker Millsite. The test milling of Golden Hand ores involves only the gravity mill and flotation circuit and no additional chemical beneficiation (e.g. cyanidation) (Mashburn 1988).”

Page 3-21, after the fifth paragraph. Add a new header, “*Reclamation*” with the following:

“The post-closeout reclamation condition of the project area within the FC-RONR Wilderness under this alternative, would include considerable evidence of roads and drill pads, the absence of historic mining structures (bunkhouse and outbuildings), and the remaining potential for illegal vehicle access.”

“In the short-term (1-2 years), proper waterbar construction would probably prevent the development of channelized flow erosion on roads. Seeding would have a very limited effect on erosion in this time frame. The use of non-native species and seed that has not been certified as weed-free would not comply with Forest management guidelines. Noxious weeds could start to grow and would require implementation of a control program. In the 2-5 year time frame, successful grass establishment would probably reduce surface erosion. Non-native grass and forb species could persist on the roadbeds, but would not likely spread onto adjacent undisturbed ground occupied by native species. In a mid-term time frame (5-20 years), grasses would probably die out and be replaced by naturally seeded lodgepole pine. Rates of surface erosion would stabilize. In the long-term (20-100 years), the risk of mass failure erosion would begin to decline with the establishment of deeper-rooted trees and shrubs. Visible evidence of roads and drill pads having small cut and fill volumes would also decline along with the effects from the disruption of shallow sub-surface water flow. Evidence of roads and pads having large cuts and fills (especially those built on bedrock) could persist well over 100 years.”

Page 3-22, fifth paragraph. After the sentence, “Reopening and clearing adits would allow data collection valuable to formulating a more complete geological and reserve analysis (Abbey 2003).”; add, “Bulk samples would be removed from the Golden Hand Mine site for test milling at the Walker Millsite. The test milling of Golden Hand ores involves only the gravity mill and flotation circuit and no additional chemical beneficiation (e.g. cyanidation) (Mashburn 1988).”

Page 3-22, after the fifth paragraph. Add the following to the end of the Minerals Development section:

“The volume of waste rock to be added to the dumps would be limited to that which would remain on claims No. 3 and No. 4. All action alternatives specify that waste rock would be put on existing dumps at least 150 feet from stream channels. These constraints, coupled with the steep dump slopes, appreciably limit the volume of waste rock that can be dumped. As shown on the Alternative C map (DEIS, pg. 3-29), a narrow band of white runs downslope (north) from the

Glory Hole adit to the bunkhouse. The portion of this band that lies within Claim No. 3 represents the area available for waste rock disposal. This slope consists of a natural talus slope overlain with waste rock from the Glory Hole. The present slope angle is approximately 30 degrees, with the material grading from coarse to fine in an upslope direction. In general, the finer waste rock (less than 3 inches diameter) has raveled almost down to the lower road, with mainly larger talus and waste rock (6-18 inches) below the road. Most of the additional waste rock pushed over the top of this existing dump will roll downhill with the smaller material progressively filling the voids in the coarser material. The progress of this downward migrating front of fines would be tracked as part of the compliance monitoring (see DEIS p. E-1) to prevent its movement off-claim. Any waste rock from the lower adit would need to be moved eastward along the road (outside of the RHCA) to place it on the lower part of the Glory Hole dump.”

“Based on an available area of approximately 1000 square yards, and assuming an average depth of one foot, about 300 cubic yards of waste rock could be placed on the dump.”

Page 3-22, after the seventh paragraph. Add a new header, “*Reclamation*” with the following:

“The post-closeout reclamation condition of the project area within the FC-RONR Wilderness under this alternative would include minimal evidence of roads and drill pads, standing historic mining structures (bunkhouse and outbuildings), and considerably less potential for illegal vehicle access (due to partial recontouring of FS Trail #013). The recontouring of roads and drill pads and the extensive surface erosion controls would hasten the natural recovery processes.”

“In the short-term (1-2 years), the restoration of a natural slope profile by recontouring the roads and drill pads, would lower the risk of mass failure erosion and restore near-surface hydrologic functioning. The greatly increased water infiltration rate, along with surface protection provided by a straw mulch layer, would immediately reduce surface erosion rates. In the 2-5 year time frame, successful grass and forb establishment would reduce surface erosion further.”

“Reclamation bond release criteria would ensure the implementation of maintenance revegetation measures, if needed. Noxious weed establishment would be unlikely due to the requirement for certified weed-free seed and straw. Surface erosion rates would probably stabilize in this period. In the mid-term time frame (5-20 years), grasses would probably die out and be replaced by naturally-seeded lodgepole pine. In the long-term (20-100 years), the risk of mass failure erosion would decline further with the establishment of deeper-rooted trees and shrubs. There would be little visible evidence of roads and drill pads. Evidence along Trail #013 of a former roadbed would be limited to a belt of younger vegetation below and adjacent to the 18” wide trail. Only those roads and drill pads having large cuts and fills (especially those constructed on bedrock) could have visual impacts that persist over 100 years. This would likely be limited to a discontinuous scar at the top of the old cutslope where insufficient material is available for fully recontouring.”

Page 3-23, sixth paragraph. After the sentence, “Reopening and clearing of adits would allow data collection valuable to formulating a more complete geological and reserve analysis.”; add, “Bulk samples would be removed from the Golden Hand Mine site for test milling at the Walker Millsite. The test milling of Golden Hand ores involves only the gravity mill and flotation circuit and no additional chemical beneficiation (e.g. cyanidation) (Mashburn 1988).”

Page 3-23, after the sixth paragraph. Add, “See the discussion of waste rock under Alternative C. The same constraints would apply to Alternative D.”

Page 3-23, after the seventh paragraph. Add a new header, “**Reclamation**” with the following:

“The post-closeout reclamation condition of the project area within the FC-RONR Wilderness would include evidence of roads essentially unchanged from the existing condition, and mining structures (bunkhouse and outbuildings). The potential for illegal vehicle access would remain.”

“The area of disturbed ground to be reclaimed (drill pads and the campsite) would be far less than the other action alternatives. In the short-term (1-2 years), the protection provided by a straw mulch layer would immediately reduce surface erosion rates in disturbed areas. In the 2-5 year time frame, successful grass and forb establishment would reduce surface erosion further. Reclamation bond release criteria would ensure the implementation of maintenance revegetation measures if needed. Noxious weed establishment would be unlikely due to the use of certified weed-free seed and straw. Surface erosion rates would probably stabilize in this period. In the mid-term time frame (5-20 years), grasses would probably die out and be replaced by naturally-seeded lodgepole pine. Most visible evidence of the drill pads and camp would not remain.”

Roads and Access Management

Page 3-43, fourth paragraph. After the first sentence, “The gravel source identified for the road improvements is the waste rock pile at the Werdenhoff Mine site”, add the following sentences: “Approximately 500 cubic yards of gravel would be needed for the road improvements (Project Record). A representative sample of the waste rock was analyzed for acid generation potential, and was considered to have no potential. Details of the test results can be found in the Project Record. A metals leachability test (Synthetic Precipitation Leaching Procedure [SPLP] or equivalent) would be completed prior to use as aggregate.”

Page 3-43, fourth paragraph. After the sentence, “Clay fines are minimal”, add: “Best Management Practices (BMPs) will be utilized to prevent sediment movement.”

Page 3-43, fourth paragraph. Add the following sentences to the end of the paragraph, “Waste rock material would be excavated from the waste rock pile in a manner that maintains the existing slope configuration, which would reduce the amount of regrading required at closure, when road improvements are completed.” “Reclamation would consist of reducing slope angles to their original configuration, where necessary.”

Page 3-46, first bullet. Add a sentence to the end of the first bullet, “A metals leachability test (Synthetic Precipitation Leaching Procedure [SPLP] or equivalent) would be completed prior to use of waste rock as aggregate.”

Wilderness Resource

Page 3-54, Figure 3-6, Wilderness Experience Analysis Area Golden Hand Mine Project map. Replace the “±” symbol with a “↑” (north arrow).

Page 3-59, Photo 3-10 description. Replace, “Trail #103” with “Trail #013”.

Pg. 3-63, last paragraph, third sentence. Add, “as compared to Alternative B” after “untrammelled conditions” in the sentence, “These measures would slightly decrease the impacts

to the natural integrity and untrammeled conditions by protecting sensitive areas and preventing the establishment and spread of noxious weeds.”

Page 3-64, second paragraph, second sentence. Add, “As compared to Alternative B, these conditions” to the beginning of the sentence, “This could lessen the perceived impacts to Wilderness character by limiting uses not incident to the mining operation”. Delete, “This”.

Page 3-65, second line. Add, “as compared to Alternative B” after “under this alternative” in the sentence, “...however, the decreased amount of new road construction under this alternative would slightly lessen the adverse impacts by decreasing the amount of disturbed area.”

Page 3-65, second paragraph, second sentence. Add, “compared to Alternative B,” after “recreationists” in the sentence, “These restrictions on the length of the work day and the use of artificial lighting (no artificial work lighting would be allowed on the claims with the exception of headlamps/flashlights) would decrease the impacts to recreationists by decreasing the amount of time when noise, dust, and other signs of development and mechanization could be experienced by the visitor.”

Page 3-65, third paragraph, third sentence. Delete, “evidence of” in the sentence, “The lack of evidence of human habitation in the Wilderness would benefit the visitor’s solitude and sense of remoteness.”

Page 3-65, third paragraph last sentence. Replace, “possible” with “possibly” in the sentence “This would provide a sanitary method of addressing the human waste issue with benefits to naturalness, and possible remoteness and solitude, but to others this pit toilet represents permanency, and a lack of solitude, remoteness, and primitiveness.”

Page 3-66, second paragraph, first sentence. Replace the sentence, “This alternative would lessen the impacts to the natural integrity and untrammeled conditions of the area by having a smaller area subject to human control and human influence” with “Alternative D would have less impacts to natural integrity and untrammeled conditions than Alternatives B and C by having a smaller area subject to human control and human influence.”

Page 3-66, fifth paragraph, third sentence. Replace, “regulations” with “stipulations” in the sentence “However, under this alternative, living conditions would be primitive and subject to the same regulations as outfitter camps that provide client services in the Wilderness (Appendix C).”

Page 3-67, fourth paragraph. Add, “as compared to Alternative B” to the end of the sentence, “Limiting the work day and the duration of operations and restricting the use of artificial lighting would also reduce impacts to the Wilderness visitor’s experience (see Alternative C discussion).”

Page 3-68, third paragraph. Replace, “environment” with “experience” in the sentence, “When considering the cumulative effects of the proposed project, including road building, ground disturbance, motorized and mechanized uses, and access into the FC-RONR Wilderness, other impacts to the wilderness character and environment must be considered.”

Page 3-70, second paragraph. Replace, “consistent” with “inconsistent” in the sentence, “The alternatives that allow motorized access and road construction in Wilderness (Alternatives B and C) are not consistent with the Wilderness Plan.”

Page 3-70, second paragraph. Replace, “essential or reasonable” with “necessary” in the sentence, “Based on the Surface Use Analysis stating that “...trenching is not reasonably incident...at this time” (see Appendix B), motorized access is not essential or reasonable based on the amount and type of development work proposed.”

Soil and Water Resources

Page 3-79, Figure 3-9, Wetland Survey Golden Hand Mine Access Roads map. Replace the “±” symbol with a “↑” (north arrow).

Page 3-82, second paragraph, fourth sentence. Replace, “4” with “7” in the sentence, “Less than 4 percent of the bed material consists of fines.”

Page 3-82, sixth paragraph, last sentence. Delete, “(3.3 percent)” from the sentence, “Dominant and subdominant substrate materials are gravel and rubble, with small amount of fines (3.3 percent).”

Page 3-87, second paragraph, third sentence. Replace, “roads” with “FR 371 and 373” in the sentence, “Based on the model, sediment contribution from roads to streams outside of the Wilderness would be improved for Alternatives C and D.”

Page 3-87, second paragraph, after the last sentence. Add, “No reductions in sediment delivery to streams from Logan Creek Road would occur because no improvements to the road were identified as necessary (see page 3-37, DEIS).”

Page 3-87, Table 3-6. Projected Change in Sediment Delivery to Streams under the Different Alternatives for the Golden Hand Mine Project. For Logan Creek road, under Alternatives C and D, replace “0.1” with “0.6” for both alternatives.

Page 3-90, second paragraph, fifth sentence. Delete the sentence, “The risk of acid rock drainage and release of metals is a function of the sulfide content of the disturbed rock.”

Page 3-90, second paragraph, after the last sentence. Add, “A host of factors in addition to sulfide content influence whether material will produce acid drainage or not. Because of this complexity, the prediction of acid generation involves a number of differing analyses. The level of predictive modeling required is directly related to the magnitude of the mining project and the environmental values at risk. Acid Base Accounting (an initial screening procedure) was conducted for this project.”

Page 3-90, sixth paragraph, last sentence. Under Alternative C, delete the sentence, “Further testing and monitoring of acid generating potential is warranted based on ABA analyses and is described in the monitoring plan in Appendix F.” Replace with, “The use of Acid-Base Accounting (ABA) method for assessing the acid drainage potential of waste rock is a rough screening procedure for determining if more accurate predictive tests are necessary. Its primary utility is in eliminating material from further consideration. The ABA for the metamorphic rock found in the Glory Hole (upper adit) indicates that further testing is required to more accurately characterize the waste rock. Determining the need for greater accuracy amounts to a risk analysis involving several factors, including the volume of waste rock. While a full-scale production

scenario would require further characterization, the Forest Service has determined that the limited development proposed by this project does not justify it at this time.”

“The specific volume of waste rock that would be generated has not been explicitly stated by AIMM. The volume of waste rock placed on the dumps would be monitored as part of compliance monitoring. Should the operator anticipate generating more than 20 cubic yards of waste rock, further testing of the rock would be required. Testing would include use of the Synthetic Precipitation Leaching Procedure (SPLP) test (or equivalent) for metals leachability, and a humidity cell test for acid generation potential. If test results indicate that acid generation or metals leaching is likely, the implementation of appropriate mitigation measures would be required.”

“The waste rock at the Werdenhoff Mine proposed to be used for aggregate is highly unlikely to generate acid drainage (NP/AP ratio of 23, documented in the Project Record). As an added safety measure, additional geochemical testing of the Werdenhoff waste dump material would be conducted prior to use on roads and fords.”

Page 3-90, sixth paragraph. Under Alternative C, add, “If development of the adit or exploration drilling causes a discharge of water with flow large enough to impact nearby perennial surface water, the operator would be required to seek a National Pollution Discharge Elimination System (NPDES) permit through EPA and the Idaho DEQ.”

Page 3-91, first paragraph. Under Alternative D, add, “If development of the adit or exploration drilling causes a discharge of water with flow large enough to impact nearby perennial surface water, the operator would be required to seek a National Pollution Discharge Elimination System (NPDES) permit through EPA and the Idaho DEQ.”

Page 3-92, **Summary** heading. Add, “**of Environmental Effects of the Alternatives**” to the “**Summary**” heading.

Page 3-92, after the **Summary** heading. Add, “**Sediment**” as a subheading.

Page 3-92, after the fifth paragraph, before the last paragraph on the page. Add a, “**Metal Contaminants**” subheading.

Page 3-93, before the first paragraph. Add a, “**Wetland and Riparian Zones**” subheading.

Page 3-93, third paragraph. Replace the third paragraph:

“Alternative B does not conform to the State of Idaho Antidegradation Policy because less degrading alternatives (Alternatives C and D) are available. Streams in the analysis area are ‘Tier 2 Waters’ and must be maintained and protected unless an analysis and public review process concludes that the degradation is necessary for social and economic reasons, and that other less degrading alternatives are not available (IDAPA 58.01.02[051]). This alternative would have the highest net road miles and the highest number of stream crossings with fewer mitigation measures to minimize sediment contributions to area streams. Impairment of beneficial uses in Coin Creek, Beaver Creek and Smith Creek may occur under Alternative B.” with;

“The Idaho Antidegradation Policy requires that ‘existing instream uses and the level of water quality necessary to protect the existing uses shall be maintained and protected’ (IDAPA, 16.0102.021.01). Streams in the analysis area are ‘Tier 2 Waters’ and must be maintained and

protected unless an analysis and public review process concludes that the degradation is necessary for social and economic reasons, and that other less degrading alternatives are not available (IDAPA 58.01.02[051]). The analysis supports the Antidegradation Policy, as salmonid spawning and rearing and cold-water biota protection from accelerated sediment production would not be precluded by any of the alternatives, except Alternative B. Alternative B would have the highest net road miles and the highest number of stream crossings with fewer mitigation measures to minimize sediment contributions to area streams. Impairment of beneficial uses in Coin Creek, Beaver Creek, and Smith Creek may occur under Alternative B. While there may be a risk from several sources, including the accelerated sediment to ESA listed species (see Fisheries Resource section and Biological Assessment), the goals of the ESA and Antidegradation Policy are not the same.”

“Under Alternatives C and D, the WEPP model predicts that project-related sediment delivery would decline in the Smith Creek watershed, resulting in potential benefits to fish and fish habitat. In the Beaver Creek subwatershed, a variety of activities, including sediment delivery, may cause impacts to listed fish species. Modifications included in Alternatives C and D would largely decrease risk and meet the intent of Idaho’s Antidegradation Policy.”

Page 3-93, third paragraph, after the second sentence. Add, “The analysis supports the Antidegradation Policy, as salmonid spawning and rearing and cold-water biota protection from accelerated sediment production would not be precluded by any of the alternatives, except Alternative B.”

Page 3-97, after the last bullet. Add, “Fish population viability, pool frequency and quality, water temperature, and hydrology were originally considered as indicators. They were dropped from further analysis due to difficulty in detecting measurable change. These and other indicators were tracked in the Biological Assessment (BA) for effects to listed fish under Alternative C.”

Fisheries Resource

Page 3-98, fourth paragraph, last line. Change, “temperature” to “stream flow” in the sentence, “These RMOs apply to key fisheries habitat features, also known as “indicators”, such as temperature and large woody debris.”

Page 3-102, first paragraph, last sentence. Delete, “(U.S. District Court for the District of Columbia memorandum order, April 30, 2000).”

Page 3-102, second paragraph, second sentence. Add, “by the USFWS (USFWS, 50 CFR 1236)” after, “been proposed” to the sentence: “Critical habitat for bull trout has been proposed, but not designated by the USFWS at this time.”

Page 3-102, second paragraph, third sentence. Delete the sentence, “Should the proposed critical habitat be designated for the vicinity of the Golden Hand Mine project before the Record Of Decision (ROD) is signed, the Forest Service will conference with the USFWS on critical habitat standards and guidelines.”

Page 3-102, fourth paragraph, fourth sentence. Replace, “(16.4 miles)” with “(approximately 20 miles)” in the sentence, “This route (16.4 miles) includes FS Trail #013 and FR 371, 373, and 343 (Figure 1-2, Chapter 1).”

Page 3-103, Figure 3-11. Fisheries Analysis Area map. Replace the, “#370” road label with “#373.”

Page 3-104, fourth paragraph. Replace, “Accord” with “Achord.”

Page 3-104, footnote to Table 3-7. Replace, “Accord” with “Achord.”

Page 3-104, footnote to Table 3-7. Replace the, “Payette National Forest, 1999, 2002” reference with “USDA Forest Service 1999 and 2002.”

Page 3-105, first paragraph, first sentence. Replace the reference, “Forest Service surveys, 2002” with “USDA Forest Service 1999 and 2002.”

Page 3-105, second paragraph, fourth sentence. Add, “USDA Forest Service” to the reference, “(1999 and 2002).”

Page 3-105, third paragraph, second sentence. Add, “USDA Forest Service” to the reference, “(1999 and 2002).”

Page 3-105, third paragraph, fourth sentence. Add, “USDA Forest Service 1999 and” to the reference, “(Unpublished data on file, Payette NF, 2002).”

Page 3-105, third paragraph, sixth sentence. Delete the sentence, “Should the proposed critical habitat be designated for the vicinity of the Golden Hand Mine site before the Record Of Decision (ROD) is signed, the Forest Service may be required to conference with the USFWS on critical habitat standards and guidelines.”

Page 3-105, fourth paragraph, first sentence. Add, “USDA Forest Service” to the reference: “Payette National Forest fish surveys, unpublished data, 1999 and 2002.”

Page 3-105, first bullet. Add, “(Raleigh 1994)” at the end of the bullet, “Streams lack desired winter cover for fish in the form of deep pools.”

Page 3-107, sixth paragraph, third sentence. Delete, “indicating that these tributaries are sensitive to sedimentation (Thurrow 1985, Burns and Edwards 1985)” and replace with, “(Nelson and Burns 1999)”.

Page 3-108, third paragraph, fourth sentence. Replace, “(unpublished data, PNF, 2002)” with “(Project Record).”

Page 3-108, fifth paragraph, second sentence. Replace, “salmonids” with “fish” in the sentence, “Fuels and petroleum products are moderately to highly toxic to salmonids, depending on concentrations and exposure time.” Delete, “(Allen and Dawson 1961)” and add, “Mason 1994.”

Page 3-111, under the **Environmental Effects** header. Add, “This analysis quantitatively describes the effects to the *processes* which affect fish and fish habitat (for example, sediment modeling and miles of road construction), and qualitatively describes effects to fish. Despite the

use of best scientific and commercial data available, the Payette National Forest cannot quantify the specific amount of effects to individual fish or incubating eggs for these actions.”

Page 3-111, third paragraph, third sentence. Delete, “increases in water temperature and” and “macroinvertebrate diversity” from the sentence, “Tree removal within 75 feet of a stream could reduce current and future recruitment and shade, resulting in increases in water temperature and decreases in macroinvertebrate diversity, channel complexity and potential habitat (Bisson et al. 1987).”

Page 3-117, first paragraph, first sentence. Replace, “(Ploskey 1970)” with “(Pluhowski).”

Page 3-117, first paragraph, second sentence. Delete, “dewater redds and expose developing embryos, strand fry (CRFC 1979), and delay downstream migration of smolts” from the sentence, “Fluctuation water levels can delay spawning migrations, impact breeding condition, reduce salmon spawning area (Beiningen 1976), dewater redds and expose developing embryos...”. Add, a period after (Beiningen 1976). Add the following sentences: “Reductions in discharge can cause redd dewatering or reduced intergravel flows, which can lead to salmonid egg and embryo dessication, or reduced water exchange rates in the environment of the embryos. Diversion of water from streams usually leads to potential changes in the carrying capacity of streams for salmonid fishes (Bjornn and Reiser 1991).”

Page 3-117, first paragraph, fourth sentence. Delete the sentence, “This delay could limit fish survival and reduce potential numbers of returning adults (NWPPC 1986).”

Page 3-117, third paragraph, fifth sentence. Add, “(below the confluence with the unnamed tributary)” after the second mention of Coin Creek in the sentence, “Because the tributary flows into Coin Creek just north of the claim boundary and upstream of known occupied fish habitat, changes in flows to Coin Creek would be used as a measure of effect to fish habitat in this analysis.”

Page 3-118, first bullet. Globally replace, “(GPD)” with “(gpd)” each occurrence on this page.

Page 3-119, second paragraph, second sentence. Replace, “salmonids ” with “fish” in the sentence, “Fuels and petroleum products are moderately to highly toxic to salmonids, depending on concentrations and exposure time (Gutsell 1921, Allen and Dawson 1961).” Delete “Allen and Dawson 1961” and add “Mason 1994.”

Page 3-119, second paragraph, third sentence. Add, “aquatic” before, “environment” in the sentence, “Leakage of fuel, oil, or hydraulic fluid from drilling equipment poses a risk to the environment.”

Page 3-120, third paragraph, seventh sentence. Add, “that indicates spill prevention, control, and cleanup contingencies in compliance with 40 CFR 112,” after the word, “similar” in the following sentence: “A Spill Prevention Containment and Countermeasures (SPCC) plan or something similar would be submitted for Forest Service approval prior to project implementation.”

Page 3-121, Table 3-11, Comparison of Roads and Crossings by Alternative. For Alternative C, Road Miles in RHCAs, replace “8.3” with “8.4.”

Page 3-123, fourth paragraph, first sentence. Replace, “0.1 miles” with “0.2 miles” in the sentence, “In summary, Alternative C would increase roads in RHCAs by 0.1 miles, but this

alternative also includes a number of measures to minimize impacts to RHCAs. These actions are expected to minimize impacts to listed fish species, habitat, and water quality.”

Page 3-124, after the fourth paragraph. Add the following new paragraphs: “The Forest transmitted a Biological Assessment (BA) to NOAA – Fisheries and the USFWS on March 20, 2003 (Project Record). The BA analyzed the effects of Alternative C (the preferred alternative) on TES fish and critical habitat. The BA states that Alternative C is *likely to adversely affect* chinook salmon, steelhead and bull trout, critical habitat for chinook salmon, and proposed critical habitat for bull trout. Because Alternative C is *likely to adversely affect* chinook salmon and critical habitat, it could adversely affect essential fish habitat. Alternative C was determined *likely to adversely affect* the listed species or critical habitat because some habitat elements are likely to be degraded.”

“The considered actions are *likely to adversely affect* listed species or habitat but are not likely to lead to listing of cutthroat trout. This determination is based on the scope of activities described in the DEIS, project plans, or other supporting documents for the project. The potential introduction of sediment into streams is likely with the ground disturbance associated with project activities. Alternative C has the potential to result in a “take” or to hinder attainment of relevant “functioning appropriately” indicators. Adverse effects stem from sedimentation from road use, construction, and reconstruction, water withdrawal, potential fuels contamination, and disturbance of RMOs within RHCAs.”

“It is important to note that based on comparisons of the alternatives, the effects to listed species and proposed habitat under Alternative B are greater than Alternative C and the effects to listed species and proposed habitat under Alternative D are less than Alternative C. But because consultation was not initiated on Alternatives B and D, no formal determination of their effects was made.”

Page 3-124, fifth paragraph, fourth sentence. Delete the sentence, “Outfitters and general recreationists should be educated about the potential detrimental effects to listed fish of water use and recreation in and around streams.” Add, “Effects of these activities are described in Wagoner (2001).”

Page 3-124, sixth paragraph, first sentence. Delete, “Another non-project action is”, and capitalize, “the”. In addition, delete “that” in the sentence, “Another non-project action is the Walker Millsite that operates under a plan of operations approved by the Forest Service in 1990.”

Page 3-124, sixth paragraph. Add this sentence to the end of the paragraph: “Effects are described in Faurot (2002).”

Page 3-125, third paragraph, second sentence. Replace the, “USDA/USDI 1998” reference with “NMFS 1998 and USFWS 1998.”

Page 3-125, fourth paragraph, end of the paragraph. Add, “The fisheries analysis identifies actions that would have adverse effects to TES fish and fish habitat. Due to these documented adverse effects, some project actions in Alternatives B and C do not comply with PACFISH MM-1 (see Table 3-1, p. 3-24), to varying degrees (see p. 3-24). Proposed actions include construction of new roads in RHCAs. Alternative B constructs 0.6 miles of road in RHCAs and Alternative C constructs 0.2 miles of road in RHCAs. A Watershed Analysis has not been completed; therefore these actions are not compliant with PACFISH RF2 (Table 3-1, p. 3-24).”

“A one-time, site-specific non-significant amendment to the Forest Plan is needed to allow for the proposed activities, which are not compliant with PACFISH Standards and Guidelines and thereby inconsistent with the Forest Plan. See DEIS Chapter 2, Forest Plan Amendments, for description of Forest Plan amendments for each alternative. The amendment for PACFISH is described as a “one-time, site specific, non-significant amendment that would not change overall Forest Plan goals, objectives, Desired Future Conditions, or associated outputs”.

“Regarding significance, the amendment when evaluated in light of 36 CFR 219.10 (f) and the four factors in Forest Service Handbook (FSH) 1909.12, section 5.32 (Process to Amend the Forest Plan), is not a significant change. This amendment would change PACFISH Standards and Guidelines MM-1 and RF-2 in a very limited portion of the area affected by PACFISH, which covers portions of five northwestern states. The project area has been altered by previous mining exploration. This amendment would allow further alteration of the area, but the federal action has extensive provisions for mitigation of mining and road-related effects to RHCAs.”

Page 3-126, third paragraph, last sentence. Delete the sentence, “Consultation may need to be reinitiated to discuss the effects of this non-adherence to BO direction.”

Page 3-126, third paragraph, second sentence. Replace, “Consultation may need to be reinitiated to discuss the effects of this non-adherence to BO direction” with “The Forest Service recognizes that the previous biological opinions (BOs) from NOAA Fisheries contain provisions with which the Forest cannot comply due to time constraints. For this reason, the Payette has reinitiated consultation with NOAA Fisheries on the Payette National Forest Plan as part of the request for formal consultation on the Golden Hand Mine project, Alternative C. The Forest transmitted the fisheries BA to NOAA Fisheries on March 20, 2003 (letter from Forest Supervisor Mark Madrid to Ken Troyer, NOAA Fisheries).”

Wildlife Resource

Page 3-135, fourth paragraph, second sentence. Replace, “83 percent” with “59 percent”, and “76 percent” with “75 percent”, respectively, in the sentence, “Approximately 83 percent of the Upper Big Creek LAU, and 76 percent of the Beaver Gold LAU have been identified as potential lynx habitat (Table 3-13).”

Page 3-135, Table 3-13. Replace Table 3-13 Potential Lynx Habitat in the Upper Big Creek and Beaver Gold LAUS with the table below.

Table 3-13. Lynx Habitat in the Upper Big Creek and Beaver Gold LAUs

LAU		Beaver Gold	Upper Big Creek
Total Acreage		60,156	61,611
Acres of Potential Habitat		45,329	25,587 *
Acres of Denning Habitat		Unknown	9,606
Acres of Currently Unsuitable Habitat		Unknown	5,631 *
Acres of Suitable Habitat		Unknown	19,956*
% of Unsuitable Habitat	Standard	≤30%	≤30%
	Condition within LAU	Unknown	22%
	Compliance with LCAS	Unknown	Yes
	Comments	Data on current vegetation condition is not available for acres inside the Wilderness	*potential, suitable, and unsuitable habitat acres outside of the Wilderness
% of Denning Habitat	Standard	≥10%	≥10%
	Condition within LAU	Unknown	38%
	Compliance with LCAS	unknown	Yes
	Comments	Data on current vegetation condition is not available for acres inside the wilderness	Denning habitat has not been ground verified in this LAU
% of Habitat changed by Management activities	Standard	≤15%	≤15%
	Condition within LAU	0%	0%
	Compliance with LCAS	Yes	Yes
	Comments		

Page 3-135, fifth paragraph, third sentence. Replace, “are” with “were” in the sentence, “Transient lone wolves are known to occur in Idaho.”

Page 3-141, second paragraph, first sentence. Add, “The analysis of effects” to the beginning of the sentence, “to threatened, endangered, Region 4 Sensitive, MIS, and Idaho Species of Concern is based on information from...”

Page 3-148, third paragraph, last sentence. Delete the sentence, “Only very limited displacement of blue grouse would occur around the mine site and would not measurably contribute to other activities in the area that may affect blue grouse habitat in the area (Appendix A).”

CHAPTER 6- REFERENCES

Page 6-1, first reference. Replace, “Accord” with “Achord.”

Page 6-1, second reference. Delete the reference, “Allen, M.B., and E.Y. Dawson. 1961. Production of Antibacterial Substances by Benthic Tropical Marine Algae. *Journal of Bacteriology* 79:459.”

Page 6-1, after the second reference. Add, “Anonymous. 1980. Principles of a Resource/Reserve Classification for Minerals. U.S. Geological Survey Circular 831.”

Page 6-2, after the ninth reference. Add, “Carver, C.Q. 2002. Unpublished letter from the Krassel District Ranger to American Independence Mines and Minerals. November 22, 2002.”

Page 6-3, after first reference. Add, “Davidson, F. 2002. Personal Communication (November 21, November 26, December 3, and April, 2002). Kluane Drilling.”

Page 6-3, after the fourth reference. Add, “Egnew, A. 2002. Personal Communication (2002). Interdisciplinary Team Leader, Payette National Forest.”

Page 6-3, after the second reference. Add, “Dixon, Mike. Personal Communication (2002). Civil Engineer, Payette National Forest, McCall, Idaho.”

Page 6-3, after the twelfth reference. Add, “Environmental Protection Agency (EPA). 2002. Guidance for Quality Assurance Project Plans, EPA QA/G-5. EPA/240/R-02/009. Office of Environmental Information, Washington, D.C.”

Page 6-4, after the second reference. Add, “Faurot 2002. Biological Assessment for the Potential Effects of Managing the Payette National Forest in the Middle Fork Salmon River Tributaries, NW and Main Salmon River Tributaries, SE Section 7 Watersheds on Snake River Spring/Summer and Fall Chinook Salmon, Snake River Steelhead, and Columbia River Bull Trout and Biological Evaluation for Westslope Cutthroat Trout. Volume 8: Walker Millsite Amendment. USDA Forest Service, Payette National Forest, McCall, Idaho.”

Page 6-5, after the second reference. Add, “Federal Register, 2002. Notice of Intent to Prepare and Environmental Impact Statement. Federal Register, Vol. 67, No. 76. April 19, 2002.”

Page 6-5, after the sixth reference. Add, “IBLA. 1992. U.S. v. American Independence Mines and Minerals, 122 IBLA 177.”

Page 6-5, after the seventh reference. Add, “Idaho Department of Fish and Game (IDFG). 2002. 2002 Snorkel Survey. Unpublished data on file.”

Page 6-6, after the fifth reference. Add, “Lombardi, D.R. 2000. Letter from Givens Pursley LLP. August 30, 2000.”

Page 6-6, after the tenth reference. Add, “Mashburn, L. 1988. Untitled economic analysis report on the Golden Hand Mine group. Prepared by Boise Assayers and Metallurgy, Inc. August 30, 1988.”

Page 6-6, after the tenth reference. Add, “Mason, C.F. 1991. Biology of Freshwater Pollution, Second Edition. Essex, England: Longman Group UK Limited.”

Page 6-7, ninth reference. Delete the entire, “NMFS 1998” reference. See National Marine Fisheries Service 1998 reference.

Page 6-7, eleventh reference. Delete the entire reference, “Northwest Power Planning Council (NWPPC) 1986.”

Page 6-8, after the second reference. Add, “Peters, W.C. 1987. Exploration and Mining Geology, 2nd edition. New York: John Wiley and Sons.”

Page 6-8, third reference. Replace, “Ploskey” with “Pluhowski”.

Page 6-8, after the seventh reference. Add, “Regional Interagency Executive Committee and the Intergovernmental Advisory Committee. 1999. Ecosystem Analysis at the Watershed Scale: A Federal Guide for Watershed Analysis. Revised August 1995, Version 2.2, Portland, Oregon.”

Page 6-8, ninth reference. Delete the entire reference, “Road Density Analysis Task Team (RDATT) 2002.”

Page 6-8, after the eleventh reference. Add, “Ross, R.L. 1996. Letter by AIMM to the Forest Service describing the Plan of Operations for Golden Hand #3 and #4 (April 14, 1996).”

Page 6-9, after the third reference. Add the reference, “Sherwin, R.E., and W.L. Gannon. 2002. Use of Abandoned Mines by Bats on the Payette National Forest. University of New Mexico, Albuquerque, New Mexico.”

Page 6-9, after the fourth reference. Add, “SME. 1999. A Guide for Reporting Exploration Information, Mineral Resources, and Mineral Reserves. The Resources and Reserves Committee of the Society for Mining, Metallurgical and Exploration, Inc. (March 1, 1999).”

Page 6-9, after the sixth reference. Add, “Stone, J.G., and P.G. Dunn. 1998. Ore Reserve Estimates in the Real World. Society of Economic Geologists Special Publication Number 2, 2nd Edition.”

Page 6-10, after the first reference. Add, “Thrush, P.W. (ed). 1968. A Dictionary of Mining, Mineral and Related Terms. U.S. Department of Interior, Bureau of Mines.”

Page 6-10, after the first reference. Add, “Thurmond, C.J. 1986. Mineral Report on Golden Hand Lode Claim No’s 1-8, American Independence Mines and Minerals Company. Unpublished mineral report.”

Page 6-10, after the second reference. Add, “Transcript. 1988. Transcript of testimony given in U.S. v American Independence Mines and Minerals, Inc., hearing before U.S. Department of Interior Office of Hearings and Appeals, Judge Ramon M. Child. August 29- September 1, 1988.”

Page 6-10, after the third reference. Add, “Tysdal, R.G. 2000. Revision of Middle Proterozoic Yellowjacket Formation, Central Idaho, and Revision of Cretaceous Slim Sam Formation, Elkhorn Mountains Area, Montana. USGS Professional Paper 1601. 13 pages.”

Page 6-11, after the thirteenth reference. Add, “USDA Forest Service. 2003. Frank Church-River of No Return Wilderness Final EIS- Internal Review Draft, February 4-6, 2003. Bitterroot, Boise, Nez Perce, Payette, and Salmon-Challis National Forests.”

Page. 6-12, first reference. Delete the entire, “USDA Forest Service and USDI Bureau of Land Management 1998” reference. See National Marine Fisheries 1998 reference.

Page 6-12, after the seventh reference. Add, “WME. 2002. Section CI, Table 5, Cost Indexes for Surface Mine Capital Costs and Operating Costs. Western Mine Engineering, Inc. Spokane, Washington.”

CHAPTER 7- ACRONYMS AND GLOSSARY

Page 7-4, after the Beneficial use definition. Add, “**Bentonite**- A sedimentary rock largely composed of the clay mineral montmorillonite that is able to absorb large quantities of water.”

Page 7-10, after the Latite definition. Add, “**Light road construction**- Removal of vegetation, slough, and downed logs from the roadbed.”

Page 7-11, after the Monitoring definition. Add, “**Mulch**- Any organic matter such as leaves and straw used to protect disturbed areas from surface erosion.”

APPENDIX E- MONITORING PLANS

Page E-1, Minerals and Geology Monitoring, Replace the Minerals and Geology Monitoring plan for compliance with approved plan of operations with the attached Minerals and Geology Monitoring Plan for compliance with approved plan of operations.

Page E-2, Water Quality Monitoring, Replace the Water Quality Monitoring plan for compliance with the Clean Water Act with the attached Water Quality Monitoring plan for compliance with the Clean Water Act.

Page E-2. After the above plan, add the attached Water Quality Monitoring plan for monitoring surface fines.

Page E-2. After the above plan, add the attached Water Quality Monitoring plan for verifying compliance effectiveness with BMPs.

Page E-8, Fish Habitat Monitoring. Replace the Fish Habitat Monitoring plan with the attached Fish Habitat Monitoring plan for PACFISH compliance.

Page E-8. After the above plan, add the attached Fish Monitoring plan for minimizing impacts to listed fish.

Minerals and Geology Monitoring

Program: Minerals and Geology

Activity, Practice, or Effect: Mineral Development

Project Name: Golden Hand Mine No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations

Location: Sec 26, T22N, R9E Boise Meridian

Objectives: Ensure compliance with approved plan of operations

Monitoring Type: Effectiveness

Parameters:

- Any material non-compliance documented. If resolved in field without written Notice of Non-compliance, provide written documentation of issue, resolution, and photographs (if applicable) for approval of FS authorized officer
- Provide daily documentation of work progress, effects, visitor conflicts

Methodology:

- Site visits
- Photo log
- Video documentation
- Report copies to District Ranger, Wilderness Program Manager, AIMM authorized representative

Frequency/Duration: Daily during operating season, life of project

Data storage: District Minerals files

Analysis: Interdisciplinary (Wilderness, Soil and Water, Fisheries, Planning)

Report: Monthly summary; Annual, after seasonal closeout

Cost: \$10,000/year

Personnel: Minerals Technician, Geologist, and Minerals & Geology Program Manager

Responsible Individual: Minerals Program Manager

Responsible Official: Krassel District Ranger

Prepared by: Jim Egnew, Minerals & Geology Program Manager

Date: 1/27/03

Water Quality Monitoring

Program: Soil and Water Resources

Activity, Practice, or Effect: Clean Water Act compliance for underground mine development and drilling

Project Name: Golden Hand Mine No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations

Locations: Adit and drill hole discharges at the Golden Hand Mine site

Objectives: Verify compliance with Clean Water Act. Underground development has the potential to increase flows from the adit and degrade water quality. Flowing drill holes also have the potential to degrade water quality. Monitoring of these discharges would provide early warning of potential degradation of water quality

Monitoring Type: Effectiveness

Parameters: All regulated metals, nitrate, pH, specific conductance, and flow. Any flow of water encountered during drilling operations or underground development that exceeds 10 gpm would be reported immediately to the Payette National Forest

Methodology: Use standard EPA water sampling protocols. The detection limits for metals should be low enough to be able to compare to EPA chronic aquatic standards

Frequency/Duration: Monitoring will be conducted at the beginning and end of each operating season. Monitoring of the lower adit pH will be conducted weekly.

Data storage: Krassel Ranger District

Analysis: PNF Specialists

Report: Field notes and laboratory data sheets kept on file at the Krassel Ranger District

Cost: \$200- 400 per sample for lab analyses

Personnel: PNF personnel

Responsible Individual: Minerals Program Manager

Responsible Official: Krassel District Ranger

Prepared by: Joe Gurrieri, Reclamation Specialist/Hydrogeologist

Date: 1/23/03

Water Quality Monitoring

Program: Fisheries/Minerals and Geology

Activity, Practice, or Effect: Biological Opinion compliance monitoring

Project Name: Golden Hand Mine No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations

Locations: Smith Creek, North Fork Smith Creek, and Coin Creek

Objectives: Monitor surface fines

Monitoring Type: Effectiveness

Parameters: Surface fines

Methodology: R1/R4 fish habitat inventory methodology

Frequency/Duration: **Beginning and end of the operating season over the life of the project**

Data storage: Krassel Ranger District

Analysis: PNF Specialists

Report: Field notes and data sheets kept on file at the Krassel Ranger District

Cost: \$500 per month

Personnel: GS-9/11 Fisheries Biologist, GS5/6/7 Fisheries Technician

Responsible Individual: Minerals Program Manager

Responsible Official: Krassel District Ranger

Prepared by: Jim Egnew, Minerals & Geology Program Manager

Date: 4/28/2003

Water Quality Monitoring

Program: Minerals

Activity, Practice, or Effect: Monitor instream water quality

Project Name: Golden Hand No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations

Locations: Coin Creek above and below the project area

Objectives: Verify effectiveness of BMP's. Ensure compliance with Clean Water Act

Monitoring Type: Effectiveness

Parameters: Samples will be analyzed for metals, hydrocarbons, turbidity, pH, specific conductance

Methodology: Use standard EPA water sampling protocols. The detection limits for metals should be low enough to be able to compare to EPA chronic aquatic standards

Frequency/Duration: Monthly during operating season

Data storage: Krassel Ranger District

Analysis: PNF Specialists

Report: Field notes and laboratory data sheets kept on file at the Krassel Ranger District

Cost: \$4,000 per year

Personnel: GS- 9 Geologist, GS- 9 Minerals Technician

Responsible Individual: Minerals Program Manager

Responsible Official: Krassel District Ranger

Prepared by: Jim Egnew, Minerals and Geology Program Manager

Date: 4/29/03

Fish Habitat Monitoring

Program: Fisheries

Monitoring Item: PACFISH compliance

Project Name: Golden Hand #3 and #4 Lode Mining Claims Plan of Operation

Location: Coin Creek drainage. Streamflow measurements would be taken at the following locations: 1) The unnamed tributary to Coin Creek that flows through the project area; a) above and below the diversion site; b) the site where an unnamed intermittent stream flows into the unnamed perennial stream; and c) on the unnamed perennial stream just above the confluence with Coin Creek. 2) On Coin Creek above where the unnamed perennial stream enters Coin Creek.

Priority: High

Objectives: Verify compliance with PACFISH standards and guidelines.

Monitoring Type: Effectiveness

Parameter: Determine whether stream flows are adequate, and in compliance with those in the “Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California”. Determine whether activities are consistent with standards and guidelines for roads management, recreation management, minerals management, and general riparian area management in PACFISH. Determine whether the water withdrawal used for mining purposes changes flows to reduce habitat quality. No more than ten percent of the stream flow of Coin Creek will be allowed to be withdrawn to reduce effects to fish.

Methodology: Depending on flows, a Price Pygmy Meter or other suitable instrument/technique would be used to determine streamflow. The method used would be appropriate for use in small, steep mountainous streams under low flow conditions.

Frequency/Duration: Frequency: Monitoring of flows would occur throughout the months of operation. Duration: Once a month for the life of the project.

Data Storage: Krassel Ranger District files

Analysis/Report: Field notes and site-visit observations of activities

Personnel: District Fisheries Biologist and District Hydrologist/Technician

Projected Costs: Zone fisheries biologist and/or zone hydrologist for up to 10 days at \$135.00/day = \$1350.00

Responsible Individual: District Fisheries Biologist and Hydrologist

Responsible Official: Krassel District Ranger

Prepared by: Deborah Artimez, Fisheries Biologist **Date:** March 17, 2003

Fisheries Monitoring

Program: Fisheries

Monitoring Item: Monitoring for presence of listed fish and evidence of spawning

Project Name: Golden Hand #3 and #4 Lode Mining Claims Plan of Operation

Location: Smith Creek, North Fork Smith Creek, Coin Creek, and Beaver Creek

Priority: High

Objectives: Avoid or minimize “take” of listed fish

Monitoring Type: Effectiveness

Parameter: Identify the life stages of all listed salmonids that might be affected by the proposed project.

Methodology: Visual surveys for spawning fish and/or redds. Snorkel surveys for presence of juvenile fish.

Frequency/Duration: To be monitored during the years of mining operation and reclamation. For bull trout: spawning/redd surveys to be conducted prior to use of fords, and biweekly August 15th-October 15th; juvenile snorkel surveys to be conducted periodically prior to and during use of fords. For steelhead: conduct spawning/redd surveys once in early June. For steelhead and chinook salmon: conduct spawning/redd surveys during spawning seasons once prior to any instream work, and once within 3-5 days of the beginning of mining operations after road construction has taken place on the Smith and North Fork Smith Creek roads.

Data Storage: Field notes would be on file in fisheries office at Krassel Ranger District and McCall Supervisor’s Office.

Analysis/Report: Field notes and site-visit observations of activities. Annually report monitoring results, compliance with and implementation of Terms of Conditions from Biological Opinions to NOAA Fisheries.

Personnel: District Fisheries Biologist

Projected Costs: Fisheries Technician for 10 visits (20 days) = \$4,500 per year

Responsible Individual: District Fisheries Biologist

Responsible Official: Krassel District Ranger

Preparer: Mary Faurot, Fisheries Biologist

Date: 4/27/03

APPENDIX G. COMMENT LETTERS

This appendix includes comment letters from Federal, State, local, and Tribal Governments, and the proponent, American Independence Mines and Minerals, Inc.

Letter 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

APR 24 2003

PAYETTE NF
SUPERVISOR'S OFFICE

Reply To
Att: OF ECO-088

APR 21 2003

02-027-AFS

Mark J. Madrid, Forest Supervisor
USDA Forest Service
Payette National Forest
P.O. Box 1026
McCall, Idaho 83638

Dear Mr. Madrid:

The U.S. Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement (DEIS) for the proposed *Golden Hand No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations* (CEQ #030085) in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and §309 of the Clean Air Act. The DEIS analyzes the impacts related to developing mining claims located within the Frank Church River of No Return Wilderness Area (FCRONR) to extract gold and silver. This letter 1) summarizes our concerns with the environmental impact of the project and the adequacy of information provided in the DEIS, 2) provides EPA's rating of the DEIS, and 3) makes specific recommendations for addressing the issues we have identified.

The proposed project involves exploring for, developing, and possibly producing gold and silver on mining claims within the FCRONR. The applicant is proposing to maintain and widen existing roads, construct 4.0 miles of new roads within the FCRONR, do exploratory drilling at 31 locations, excavate five trenches covering 750 linear feet, and develop underground working that may entail clearing, drilling, and ore extraction. Waste rock would be placed on existing dumps. The mining crew would live on-site seasonally for 10 years. Testing and milling would take place at an existing mill site 12 miles away. The applicants proposed plan does not include specific mitigation measures for anticipated adverse effects.

In addition to the applicant's proposal (Alternative B), the DEIS examines the no action alternative (Alternative A) and two other action alternatives. Alternative C is similar to the Alternative B but is modified to protect resources, and restrict activities to those that are "reasonably incident to mining." Key features of this alternative include limiting vehicle and equipment size, decreasing the amount of road construction in the Wilderness, doing sequenced drilling, restricting activities in riparian habitat conservation areas, and using site-specific Best Management Practices (BMPs). This alternative would limit duration of operations to three to

five years, and would not allow the mining crew to live on-site. Alternative D would allow activities "reasonably incident to mining" such as sequenced drilling and sampling, but does not permit trenching or building roads. The key feature of this alternative is access to claims by primitive means (e.g., pack stock, foot), and use of portable equipment to accomplish project objectives. The Forest Service has designated Alternative C as its Preferred Alternative.

The underlying purpose behind our review of this and other proposed mine operations is to eliminate or minimize potential environmental impacts by encouraging lead agencies to fully describe the mine design and associated impacts and identifying and encouraging the use of site-specific mining practices and mitigation measures including those connected actions off-site to address these impacts. The draft EIS goes a long way toward doing this with a reasonable range of alternatives including Alternatives C and D with thoughtful and appropriate mitigation measures for most impacts including significant improvements to reduce impacts to wilderness character and values, and specific mitigation measures to reduce sediment delivery and potential impacts to aquatic resources. These measures offer significant improvements over the applicant's proposed plan (Alternative B). In addition, the technical analysis of impacts is clearly presented, and appears to contain an appropriate level of detail considering the magnitude of potential impacts involved.

Since this project may lead to additional development, or production in the future, with increased impacts to environment, EPA recommends that this EIS incorporate measures highlighted below to address significant issues¹ identified in the draft EIS before any decisions are made on the proposed exploration and development activities now under consideration.

Scope of Analysis

Under the proposed project, ore from the mining claims would be processed at a nearby mill site and tailings would be disposed of in an existing tailings pond. The DEIS does not recognize these activities as a connected action, and does not fully disclose all of the potential impacts associated with milling operations and tailings disposal. For example, what are the potential impacts to aquatic resources near the mill site during operation and during the post-closure period? Specifically, EPA recommends that the EIS evaluate and disclose potential impacts associated with milling operations and tailings disposal, and if necessary, develop alternatives or mitigation measures to address these impacts.

¹ (1) impacts to wilderness character and experience, (2) potential impacts to Salmon, Steelhead, Bull Trout, and Westslope Cutthroat present in area streams, (3) potential impacts to fish habitat, especially those impacts related to sediment delivery from road building and maintenance in the travel corridor outside and within the FCRONR, (4) the scope of the draft EIS and whether milling operations should be considered connected actions, (5) whether and the extent to which a proposed project should comply with existing Forest Plan standards and guidelines, Wilderness Plan direction, and PACFISH direction, and (6) determining what activities are "required for and reasonably incident to mining" which shapes the range of alternatives under consideration.

Characterization and Use of Waste Rock

The proposed project includes underground development and possible production activities, but does not describe the possible extent of such activities. The EIS should describe the extent and magnitude of these proposed activities, and disclose information on waste rock amounts that would be added to existing waste dumps. The EIS should also include more detailed information on waste rock characterization and applying alternatives or BMPs to mitigate for potential impacts if the amounts added to the dumps are significant.

2

The DEIS also explains that waste rock from other sources would be used as aggregate in road maintenance activities, including use in stream beds, but fails to include characterization information on those wastes. The EIS should include information on waste rock used as aggregate and the possible effects associated with its use.

3

Reclamation Planning

The EIS should clearly disclose post-mining land use objectives for the area and specific reclamation requirements for each activity, including measurable reclamation objectives and bond release criteria. For example, expectations for revegetation of roads and drill pads should be clearly described in terms of percentage vegetative cover relative to reference areas, time frames for achieving success, and corrective measures if criteria are not achieved in a timely fashion. This type of information is needed in order for the public to evaluate whether reclamation plans are adequate to ensure that post-mining land use objectives can be achieved and sustained in the future.

4

Financial Assurance

The EIS should disclose the estimated cost to reclaim and close the site in a manner that achieves reclamation objectives. The EIS should identify proposed financial assurance mechanisms and evaluate whether these mechanisms would ensure that necessary reclamation work would be completed. The analysis should disclose costs associated with implementing the reclamation plan, as well as costs associated with post-closure monitoring and operation and maintenance. This is necessary to inform the public and decision-makers of the financial risk to the public posed by conditions at the site.

5

Additional Comments and Concerns

- The EIS should evaluate and disclose whether alternatives would violate State water quality standards, including antidegradation policies, for sediment.
- The monitoring plans outlined in the EIS should include commitments to follow quality assurance (QA) planning protocols. EPA believes that appropriate QA planning is an absolutely necessary part of any data collection activity.

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- Please note that EPA implements the National Pollutant Discharge and Elimination System permit program in Idaho. The EIS should note that discharges from this project, including storm water associated with construction activities, may require a permit.

In summary, our review has identified a number of concerns with both the potential environmental impact of the proposed action, and connected actions, and with the adequacy of information in the DEIS. EPA believes that it will be necessary to include additional information on potential impacts at the mill site, characterization and use of waste rock, and on monitoring, reclamation, and financial assurance to address the issues we have raised. We believe that these concerns can be resolved by including additional information in the final EIS or by modifying the action alternatives to address the concerns raised.

Based on our review of the DEIS, and the concerns noted above, we have rated the document and the Forest Service Preferred Alternative (Alternative C), EC-2 (Environmental Concerns - Insufficient Information). The applicant's proposed plan (Alt. B), however, is environmentally unacceptable because of the potential impacts and the lack of mitigation. This rating and a summary of our comments will be published in the Federal Register. A copy of the rating system used and our detailed comments are enclosed for your reference.

We appreciate the opportunity to review this DEIS and are interested in working with the Forest Service to resolve the issues we have raised. Please call Dave Tomten, Geologist, at (208) 378-5763, or Chris Gebhardt, lead NEPA reviewer, at (206) 553-0253, to discuss our comments and how they might best be addressed.

Sincerely,



Judith Leckrone Lee, Manager
Geographic Implementation Unit

Enclosure

cc: U.S. Forest Service Payette National Forest (Ana Egnew)
IDEQ
USFWS



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
500 NE Multnomah Street, Suite 350
Portland, Oregon 97232-2036

IN REPLY REFER TO:

ER03/0265

April 15, 2003

Ana Egnew
Krassel Ranger District
P.O. Box 1026
McCall, Idaho 83638

Dear Ms. Egnew:

The Department of the Interior has reviewed the Draft Environmental Impact Statement (DEIS) for the Golden Hand No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations, Payette National Forest, Valley County, Idaho. The Department offers the following comments:

Page 1-3, Chapter 1 Purpose and Need, unnumbered section, Proposed Action, 4th bullet point; and Page 2-6, Chapter 2 Alternatives, unnumbered section, Proposed Action:

The statement in the 4th bullet point, restated and expanded in Chapter 2, reads, "Obtain water from a creek for mining operations (limited to 2,500 gallons per day) and domestic purposes (limited to 13,000 gallons per day)." The Department suggests that the domestic use proposed is unrealistic. Average per capita water use in the United States ranges from 60 gallons per day to about 180 gallons per day. For the six-person crew identified in the previous bullet, the proposed withdrawal from the creek is more than 2,000 gallons per person per day, more than 10 times the national average. Further, the national average includes water for toilet flushing and lawn watering, neither of which would apply at Golden Hand. Although the DEIS does state that water use is not expected to be this high and proposed evaluating two water-use scenarios, one at 13,000 gallons per day and one at a lower (unspecified) rate, some rationale for proposing the unusually high volume of 13,000 gallons per day should be included in the document.

We appreciate the opportunity to comment.

Sincerely,

Preston A. Sleeper
Regional Environmental Officer



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83705-1255 • (208) 373-0502

Dirk Kempthorne, Governor
C. Stephen Allred, Director

KRASSEL RANGER DISTRICT

APR 17 2003

April 16, 2003

Ana Egnew – Team Leader
USDA Payette National Forest
P.O. Box 1026
McCall, Idaho 83638

RE: The Department of Environmental Quality's (DEQ) Review and Comment of the Payette National Forest's (PNF) Draft Environmental Impact Statement (DEIS) for the Golden Hand No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations.

Dear Ms. Egnew:

As stated in during the scoping process for the DEIS, the DEQ has substantial concerns regarding the proposed plan of operations (POO) by American Independence Mine and Minerals (AIMM) for the Golden Hand Mine. Furthermore, DEQ is concerned that the proposal is overly dependent on the Walker Mining Company's (aka 4th of July Mine) Cyanidation Permit #CN000029. Although DEQ is considerably critical of the USDA's DEIS, DEQ believes that the inadequacy of the DEIS occurs as a result of a poorly founded proposed POO, and the proponent's lack of providing for compliance with state and federal laws using nationally accepted design criteria, standards and best management practices.

With respect to the cyanidation permit, DEQ has issued Walker Mining Company a Notice of Intent to revoke the referenced permit. DEQ has determined that the Walker Mining Company has not fully executed its obligations according IDAPA 58.01.13.450.06.b. Rules Governing Ore Processing by Cyanidation. Specifically, Walker Mining Company has exceeded the duration for a "Pilot Facility Permit" by six years. In addition, Walker Mining Company has failed to adequately address DEQ's concerns regarding its financial assurance, facility design and monitoring plans for the ore processing facility. DEQ, therefore, intends to exercise its authorities to revoke Permit No. CN-000029. Resolution of DEQ's Notice of Intent must be completed within the month. It is, however, the Walker Mining Company's sole responsibility to expeditiously resolve these issues to DEQ's satisfaction in order maintain the permit.

With respect to AIMM's POO and the DEIS, DEQ has determined that both documents are substantially deficient in identifying and addressing issues that are governed by DEQ's legal authorities. These authorities govern impacts to surface and ground water quality (Idaho's water Quality Standards and Wastewater Treatment Requirements, IDAPA 58.01.02 (WQS)), solid waste management (Idaho's Solid Waste Management Rules IDAPA 58.01.06 (SWM)), protection of air quality (Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01), and hazardous materials handling and disposal (Rules and Standards for Hazardous Waste, IDAPA 58.01.05). These issues were specifically identified in DEQ's letter of May 17, 2002 (attached). Subsequent to that letter and prior to issuance of the DEIS, AIMM should have modified its proposed POO with provisions to comply with the State's authorities. Without these provisions AIMM's proposed POO would most likely lead to numerous violations of State law. It is

1

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obvious, therefore that unmodified, Alternative B must be flatly rejected as unlawful regardless of its technical merits.

Each of the alternatives analyzed, with the exception of the No Action Alternative A, have similar deficiencies, which may also inadvertently lead to violations of state law. Each issue and their respective governing authorities are addressed below.

None of the alternatives adequately address the transportation, use, storage and disposal of deleterious materials such as cyanide, petrochemicals, and equipment maintenance fluids. These activities should be sufficiently described that applicable criteria for operation may be identified and included in the Record of Decision (ROD) and POO, if approved. There are appropriate methods for transportation, use, handling and disposal of these materials which are recognized as "best management practices" for the prevention of non-point source pollution Idaho's "Best Management Practices for Mining in Idaho", the use of which are specifically required by the State's WQS. In addition, there are other widely industry accepted and used procedures for transportation, storage, use and handling of these materials in mining. Specific criteria for these activities should provide for: a) road use restrictions for inclement weather, road conditions, seasonal closures, etc. b) transportation must be restricted to DOT certified vehicles for this purpose; c) a formal emergency spill response plan for both transportation and on-site activities; d) an evaluation of product specific primary and secondary on-site containment systems; and e) a product specific waste disposal plan. Each of these elements should have been addressed in the proposed POO and should be evaluated from a potential risk perspective in the DEIS.

Neither the proposed POO nor alternatives adequately addressed final reclamation. For instance, what does the final reconfiguration of the waste dumps look like, what are final dump slope angles, how much topsoil will be used to cap these wastes. These same comments should be applied to the campsite, access roads, septic systems, drill holes, etc. A detailed reclamation plan including specific tasks and timetables should be evaluated in the DEIS. Although it is common that specific reclamation plans will be modified to accommodate changes in an approved plans of operations, a proposed final reclamation plan for an operation is helpful in evaluating risks associated with a proposed POO.

The alternatives specifically identify monitoring and evaluation of the site. Although the plan to monitor and evaluate (M&E) activities at the site appears to be adequate, DEQ believes that some of the effects of implementing M&E will be to shift the responsibilities of DEQ and PNF personnel and operating resources from existing priorities to this project. DEQ believes that significant environmental ramifications, will result from this shift in resource responsibilities, and therefore M&E should be identified as a cost of doing business for the proponent, and not the state and federal government.

Specific analysis and provisions for disposal of solid waste are not provided in either the proposed POO or the DEIS. The volumes of wastes generated, waste composition, and disposal methods are relevant to determining the POO's capability to comply with Idaho's Solid Waste Management Rules and/or Rules for the Control of Air Pollution in Idaho. For instance, most small operations, such as this, have used burn barrels or pits to dispose of various solid and liquid wastes. Idaho's Rules for Control of Air Pollution IDAPA 58.01.01.603, specifically states that "No person shall allow, suffer, cause or permit any open burning of the following materials:

- a. Garbage;
- b. Dead animals or parts thereof;
- c. Junked motor vehicles or any materials resulting from a salvage operation;
- d. Tires or other rubber materials or products;
- e. Plastics;
- f. Asphalt or composition roofing or any other asphaltic material or product;
- g. Tar, tar paper, waste or heavy petroleum products, or paints;
- h. Lumber or timbers treated with preservatives;
- i. Any waste materials resulting from the operation of the business;
- j. Insulated wire;

Letter to Ana Egnew
April 16, 2003
Page 3

- k. Pathogenic wastes; or
- l. Hazardous wastes.

Every alternative should specifically prohibit this disposal method. More specifically, each alternative should state that no solid or liquid wastes, as defined by Idaho's Solid Waste Management Rules, will be buried, burned or otherwise disposed of on-site. Specific methods for disposing of these wastes is relevant to the analysis and appropriate waste disposal must be part of the ROD and POO, if approved.

6

As a commercial operation, which may generate small quantities of hazardous wastes, AIMM's Golden Hand Operation may be required to file as a small quantity generator for these wastes. Regardless of its status according to the Rules Governing Hazardous Wastes, the ROD and POO, if approved, should require appropriate off-site disposal and tracking of all small quantities of hazardous waste.

Each of the issues discussed above should be discussed appropriately in both the proposed POO and DEIS in order to determine the relative risks to human health and the environment. As they are proposed, none of the alternatives analyzed, other than the "No Action Alternative", provides adequate protection for human health and the environment according to Idaho's rules and regulations governing, water, air, solid and hazardous wastes. DEQ, therefore, recommends significant modifications of all alternatives in order to be consistent with State environmental law.

7

DEQ looks forward to continuing its participation in this project, and welcomes any questions the PNF may have regarding the issues identified and discussed above.

Sincerely,



Bruce A. Schuld
Mine Waste Projects Coordinator
Waste Management & Remediation Division

BAS:tg c:\bureau\goldenhand\dms.doc

Enclosure

cc: Mr. Jack Walker
Walker Mining Company, Inc.
Yellow Pine, Idaho 83667

Mr. Jack Walker
P.O. Box 426
Vail, Oregon 97918

John M. Marshall
Givens Pursley, LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, ID 83701

file



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governor

Richard J. Collignon
director

Rick Cummins, Administrator
division of management services

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division of operations

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April 9, 2003

Ana Egnew, Resource Assistant
Krassel Ranger District
PO Box 1026
McCall, ID 83638

RE: Golden Hand Mining Claims Proposed Plan of Operations DEIS

Dear Ana:

The Idaho Department of Parks and Recreation reviewed the Golden Hand Mining Claims Proposed Plan of Operations Draft Environmental Impact Statement (DEIS). The proposed plan is controversial because the claims are located 3.5 miles inside the Frank Church River of No Return Wilderness (FCRNW) and the operators propose to use motorized equipment to work and access the claims. We are concerned about the effects that this operation plan could have on recreationists utilizing the wilderness.

The 1964 Wilderness Act provides for regulations governing ingress and egress consistent with the use of the land for mineral location and development and exploration on valid existing rights. The Idaho United States District Court ordered the Payette National Forest to complete an EIS on the operating plan for Golden Hand Mine No. 3 and No 4 lode mining claims.

The preferred Alternative C and Alternative B allow the use of motorized vehicles within the Wilderness. Alternative D would not allow motorized vehicle use, but would allow the use of motorized equipment and on-site mining occupancy.

Alternative D would provide the greatest protection of the wilderness resource, but may not be economically practical for the mining operators. Alternative B would have the greatest impact to the wilderness resource, yet it may still not be economically practical for the operators to complete all the road improvements to the claims site and reclaim impacted physical resources.


The proposed plan for the mine is for pre-development activities. Alternatives C (preferred alternative) and Alternative D would not allow the trenching activity. The elimination of the trenching will greatly reduce the ore volume being hauled out to the Walker Mill Site. The DEIS did not analyze an alternative that would utilize smaller-scale motorized equipment on the existing roadbed within the wilderness without widening the road. Such an alternative should be considered.

For example, there is a variety of trail building equipment that can fit within the existing roadbed prism and haul material effectively. Trail Tailor (see attachment) manufactures an end dump trailer that is only 45 inches wide but can haul up to 3,000 lbs or one cubic yard. Smaller equipment would require more trips to haul the ore, but would not widen the existing roadbed and would eliminate the need to partially recontour Trail #013. G-9

An alternative such as this would have similar soil disturbance effects as Alternative D, but would eliminate the need for on-site occupancy. We believe this would provide a lesser degree of wilderness resource protection than Alternative D, but would provide greater wilderness resource protection than Alternative C.

The department appreciates the opportunity to review and comment on the DEIS. The DEIS provided a fairly broad range of action alternatives. Each of these alternatives, if implemented will have an impact on the wilderness resource and recreation. It is our hope that the Payette National Forest and American Independence Mines and Minerals, Inc. (AIMM) will be able to develop an operating plan that minimizes the impact to the wilderness as much as possible.

Sincerely,



Rick Collignon, Director
Idaho Department of Parks and Recreation

**IDAHO FISH & GAME**

SOUTHWEST REGION
3101 South Powerline Road
Nampa, Idaho 83686

Dirk Kempthorne / Governor
Steven M. Huffaker / Director

April 21, 2003

Ana Egnew
USDA Forest Service
Krassel Ranger District
P. O. Box 1026
McCall, ID 83631

Subject: The Golden Hand No.3 and No. 4 Lode Mining Claims

Dear Ms. Egnew:

The Idaho Department of Fish and Game (Department) has reviewed the draft Environmental Impact Statement (DEIS) for the Golden Hand No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations and offer the following comments.

The Department recommends that the Forest Service adopt Alternative D as its preferred alternative because it minimizes resource impacts and most consistent with the Frank Church River of No Return Wilderness Management Plan (FC-RONR WMP), Payette Forest Plan, Forest Service Manual, and the bull trout and steelhead biological opinions.

1

Minerals and Geology

The FC-RONR WMP states that reasonable access "should be located to have the least long lasting impact to wilderness values." This statement is repeated throughout the DEIS. The FC-RONR WMP also states "mining-related roads are a major adverse impact on wilderness resources." The DEIS concludes that Alternative D is the most consistent with the direction of the FC-RONR WMP with respect to providing reasonable access, having the least long lasting impact on wilderness values, non-conforming wilderness uses, and the Minerals and Energy section of the plan.

The DEIS states on page 3-16 that "any activity that does not minimize adverse environmental impacts by avoiding unnecessary and unreasonable destruction of surface resources and damage to the environment is NOT reasonably incident to mining activities." Clearly, Alternative D is the only action alternative of the three analyzed that minimizes adverse environmental impacts.

2

The DEIS admits that action Alternatives B and C do not meet PACFISH direction (pg 3-26). Only Alternative D does.

Roads and Access Management

The Department disagrees with the statement that Alternative C (the preferred alternative) on page 3-46 that it would have a "positive cumulative effect on roads and access management in the

3

analysis area" especially with respect to the wilderness area. Improving access and rebuilding roads in a designated wilderness area for the purpose of providing motorized access will result in negative impacts to the wilderness area.

The DEIS states (page 3-47) "Alternative D best meets direction in the FC-RONR Wilderness Management Plan that reasonable access (to valid mining claims) be permitted, but should have the least long lasting impact on wilderness values..."

Wilderness Resource

The Forest Service Manual provides direction on activities in wilderness areas: "Where there are alternatives among management decisions, wilderness values shall dominate over all other considerations except where limited by the Wilderness Act, subsequent legislation, or regulations." It also states "... manage these nonconforming uses and activities in such a manner as to minimize their effect on the wilderness resource . . .", "Preserve the wilderness environment while allowing activities for the purpose of gathering information about mineral resources", and "mineral exploration and development operations preserve the wilderness resource to the extent possible".

Alternative D is the action alternative that minimizes impacts to water quality. The DEIS states on page 3-87 that "Overall, Alternative D would result in the least impact to water quality from sediment because it results in the least detrimental impact to water quality inside the Wilderness." And on page 3-89 "Alternative D is the least degrading alternative and therefore complies with the Clean Water Act and requirements of the state of Idaho Antidegradation Policy. The DEIS states "In review of all the water resource, wetland, and riparian indicators, Alternative D would provide the least detrimental impacts compared to Alternative A by minimizing roads and disturbance within riparian areas and addressing the greatest number of identified concerns related to roads, stream crossings, and water quality and quantity." Alternative C rates lower.

Fisheries

Alternative D would have the least impact to the fishery resources in the analysis area of the action alternatives described in the DEIS. Sediment production would be less because no roads would be constructed or reconstructed in the wilderness, vehicles would not enter the Coin Creek drainage, and water would be the only drilling additive. Alternative C would increase roads in Riparian Habitat Conservation Areas occupied or upstream of chinook salmon, steelhead, bull trout, redband trout, and westslope cutthroat trout. Alternative D on the other hand is expected to benefit riparian habitat conditions (page 3-123).

Alternative D is also the most consistent with the Forest Plan direction as amended by PACFISH. Alternative C is only "somewhat consistent".

The DEIS states that alternatives B and C would not be consistent with the measures required by the Biological Opinions (BO's) for steelhead and bull trout, that mitigation measure prescribed in the BO's would not be followed and risk to listed species may not be avoided.

4

On page 3-120, the DEIS mentions two ways roads impact streams. The DEIS should mention that roads also impact streams by impacting the hyporheic zone and thus altering groundwater flow to and upwelling in the stream channel.

5

Wildlife

The section on gray wolf (pages 3-135 - 3-136) needs to be updated with current numbers and distributions. There are more than "transient lone wolves" in Idaho.

6

Increased human presence resulting from this mining operation will result in increased harassment and poaching of wildlife. These effects should also be analyzed in the EIS.

7

Noxious Weeds

Alternative D has the least likelihood of increasing noxious weed infestations of the action alternatives.

Miscellaneous Comments

Pages 3-65 (Alternative C) and 3-68 (Alternative D) state that "As a mitigation measure . . . an interpretive display would be placed . . .". This is not mitigation and should not be referred to as such. Mitigation is defined as something that lessens the impact of an action.

8

Summary

The Department recommends that the Forest Service adopt Alternative D as its preferred alternative. By the Forest Service's own analysis, Alternative D provides the greatest protection to the fish and wildlife resources, water quality and quantity, wilderness character, and other wilderness resources. It is most consistent with the FC-RONR WMP, Payette Forest Plan, and the BO's for bull trout and steelhead.

Thank you for the opportunity to comment. If you have any questions, please contact Eric Leitzinger in the Southwest Regional Office at 465-8465.

Sincerely,



Al Van Vooren
Southwest Regional Supervisor

Cc: Natural Resources Policy Bureau
Southwest Region (Deal, Allen, Rohman)
IDEQ (Shepard)

AV/el

Board of County Commissioners, Idaho County
320 West Main Street
Grangeville, Idaho 83530

April 15, 2003

Ana Egnew
Krassel Ranger District
P.O. Box 1026
McCall, Idaho 83638

Via email at aeegnew@fs.fed.us

RE: The Draft Environmental Impact Statement for the Golden Hand #3 and #4 lode mining claims.

Dear Ms. Egnew:

Pursuant to the National Environmental Policy Act (NEPA) the Board of Idaho County Commissioners submits these comments as equal partners with the United States Forest Service on the Golden Hand Mine Draft Environmental Impact Statement (DEIS).

Valley County and Idaho County are the two Idaho counties that will be the most affected by the Record of Decision (ROD) on the Golden Hand Mine Plan of Operations Environmental Impact Statement (EIS). The Idaho County Commissioners supports Valley County's comments regarding the DEIS. Idaho County has integrated its support of Valley County's comments throughout these comments.

The Board wishes to thank District Ranger Carver for his appearance before the Board in regards to the Golden Hand Mine.

Alternatives A, C and D are not reasonable alternatives. Alternative B is the only prudent alternative presented in the DEIS.

1

Mining is important to Idaho County and would further the revenue sharing as mandated in the Act of 1908. Our county needs this revenue to support the custom, culture and heritage of its residents.

2

In the 1860's the Territorial Idaho County Commission established a highway district encompassing all of the South Fork of the Salmon River Drainage, including the area known as the Golden Hand Mine. This is evidenced in the Commission's minutes. Also evidenced is the fact that in the 1870's Idaho County contracted with Mr. Solon Hall for the maintenance and improvements on the trail/wagon road along the South Fork, continuing on to the Edwardsburg/Big Creek area.

The history of the area is important in gaining an understanding of the system of public rights-of-way that exist in this area. Idaho County at that time was very large. Years later Valley County was created from the lands of Idaho County. It is important to note that the right-of-way at the time of acceptance of the grant that Congress made in the Act of Congress of 1866, the grant of R.S. 2477 public rights-of-way, was 80-feet wide for those lands within Idaho County.

3

We know that during the 1870's there were several fords and bridges crossing the South Fork. The abutments of a bridge can still be seen on the East Fork just prior to the confluence of the East Fork and the South Fork of the Salmon River. One such bridge was built in the area of the South Fork Guard Station. That bridge later washed away in 1879.

With the many settlers to the area the South Fork corridor was quite busy in the 1870's. We know that Sylvester Smith (Three-Finger Smith) and his family moved from Warren to their ranch at the confluence of Elk Creek and the South Fork of the Salmon River. Further down stream several ranches had also been established, the Raines Brothers, George Woodard and Solon Hall.

The April 15, 1887 issue of the Idaho County Free Press reported, "Three-Fingered Smith had bought out Sim Willey's interest in the South Fork Bridge and is now located there with one of his four sons." The same newspaper reported on July 8, 1887 "The Sim Willey Bridge across the South Fork at the mouth of Elk Creek on

the Alton Trail was carried away by a freshet after the hot weather, and travel is now conveyed in a boat."

The Alton Trail to the Alton Mining District was well established and freely used by many. Three-Fingered Smith made a fortune in the district and upon his death was laid to rest approximately one and a quarter miles south of the Elk Creek Bridge.

Postal documents indicate that the mail traveled from Warren up and down the South Fork and over Elk Summit to Edwardburg/Big Creek. Knox was a post office. Other post offices included Yellow Pine, Profile, Edwardsburg/Big Creek, Hall and the Comfort Post Office at Three-Fingered Smith's Ranch on Elk Creek. The delivery routes varied from Thunder City, Lardo, Resoto, Meadows, Florence and Warren and went all the way to Copper Camp, Roosevelt and Thunder Mountain.

In review of the DEIS comments and in formulation of the Final Environmental Impact Statement (FEIS) the conclusions must represent the historic use of the area in and around the Golden Hand Mine. Occupancy and mining continue as a part of the custom, culture and heritage of Idaho County. This is consistent with the mandate of the General Mining Law of 1872.

4

The 1872 Act, states: "Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, . . . shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, . . ." (30 U.S.C. 22).

The Surface Resource Act of 1955 provides that the locator's use of the surface of his or her claim, prior to issuance of patent, would be:

...subject to the rights of the United States to manage and dispose of the vegetative resources thereof and to manage other surface resources thereof (except mineral deposits subject to locations under the mining laws.)

...any use of the surface of such claim by the United States...shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incidental thereto. 30 U.S.C. 612.

The clear meaning of this language is to authorize the United States (acting through the Forest Service on National Forest Lands) to manage the non-mineral surface resources located within a mining claim. At the same time, however, the Statute prohibits the agency from using (or regulating) the surface in a manner which endangers or materially interferes with prospecting, mining, or processing operations or uses reasonably incidental thereto.

The Board of Commissioners for Idaho County emphatically states that no roads should be closed, regulated or restricted without coordination with the Idaho County and Valley County Boards of County Commissioners. Such coordination should be requested in writing and the U.S. Forest Service proponent should schedule an appearance before the Commission to discuss the matter. As you are aware, most of the National Forests are saturated with RS 2477 rights-of-way that were established and accepted by use. The RS 2477 right-of-way grant was made directly between Congress and the grantee, which was usually the public or a county, and did not involve any Executive Branch agency in any way.

5

Public Law 88-577, 88th Congress, S. 4, September 3, 1964,
Wilderness Act, Prohibition of Certain Uses

(c) Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area),

The county has valid existing rights, while some might argue that the twelve (12) year rule might pertain to the counties right to assert jurisdiction, that assumption is not accurate. The State of Idaho through statute gave constructive notice that all RS 2477's were acknowledged and accepted prior to the end of the twelve (12) year period on the Wilderness. Very importantly, Secretary of the Interior, Gale Norton has revisited the twelve (12) year rule, subsequently issuing the Final Rule on Recordable Disclaimers in February 2003.

6

The final rule was published in the Federal Register furthering the intentions Congress expressed in its 1986 revisions to the Quiet Title Act (28 USC 2409). It is designed to eliminate the need for private legislation or litigation to remove clouds of title to the lands in which the United States Government no longer holds interest.

This rule removes the 12-year regulatory filing deadline for states and counties from the existing regulation to better conform to the revised Quiet Title Act, removes the requirement that an applicant be a "present owner of record" to be qualified under the Act, allows any entity claiming title, not just current owners of record, to apply for a disclaimer of interest, defines the "state" as used in this rule and clarifies how the Bureau of Land Management (BLM) will approve disclaimer applications involving other Federal land management agencies, including the United States Forest Service.

The Forest Service has already recognized state and county public rights-of-ways in and around the Wilderness. The Frank Church Wilderness-River Of No Return Management Plan, dated February 1985, at page 42, paragraph 3 states:

In addition, some existing mining operations in the Wilderness are accessed by roads that existed before Wilderness designation and were not excluded by corridor delineation. One such road, down Big Creek, also serves as access

Then at page 73, paragraph 1 state:

Major access roads to the Wilderness consist mainly of state, county, and Forest highways that essentially surround the Wilderness and link its fringes with major access routes.....

Finally, at page 73 paragraph 4 it states:

At the time of wilderness designation several roads were within the proposed boundaries of the Wilderness. Many were excluded by boundary adjustments or the use of road corridors resulting in fingers protruding into the Wilderness. Some, however, were left in the Wilderness for limited mining access.....

As is well known public use forms a basis for acceptance of the grant. There is no limitation on the nature of use necessary to

perfect a highway right-of-way under R.S. 2477. A road need not be heavily traveled to constitute a highway. RS 2477 was a self-executing law and the grant was made when the conditions were met. The grant is a property right and becomes the dominant estate over that portion of the public lands subject only to pre-existing mining claims. Conveyed with that grant was a bundle of associated rights, including the right to maintain the road on the right-of-way and to improve it.

"User is the requisite element, and it may be by any who have occasion to travel over public lands, and if the use be by only one, still it suffices." Wilkenson v. Dept. of Interior, 634 F.Supp. 1265, 1272 (D. Colo. 1986). The Court rejected the argument that "actual" construction "beyond mere use" was required to perfect an R.S. 2477 right-of-way.

Debate by the USFS on RS 2477 public rights-of-way cannot be initiated without an Act of Congress, which would not include the 1986 revisions to the Quiet Title Act (28 USC 2409). The General Accounting Office has confirmed the following:

No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act. 110 Stat. 3009-200. (1997)

" IN GENERAL. - Notwithstanding any other provision of law, no agency of the Federal Government may take any action to prepare, promulgate, or implement any rule or regulation addressing rights-of-way authorized pursuant to section 2477 of the Revised Statutes (43 U.S.C. 932), as such section was in effect before October 21, 1976."

It is important to note that any surface destruction, obstruction, closure, or interference with the state/county management of any public right-of-way, regardless of the ownership or administration of the land beneath public rights-of-way, is a violation of State of Idaho Code, Title 40. The Board of County Commissioners, in conjunction with the County Sheriff, has the responsibility for the public's safety, health and well-being. The responsibility and jurisdiction for law enforcement is that of the County Sheriff. It is simply common sense that the US Forest Service should approve the operator's proposal for the

protection of property from theft and vandalism. The USFS must be well aware of the following:

9

The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their right and privileges as citizens or be absolved from their duties as citizens of the State. (16 U.S.C. 480) 1897

The Board must reiterate the following, found in Title 40 of Idaho Code:

40-204A. FEDERAL LAND RIGHTS-OF-WAY.

(1) The state recognizes that the act of construction and first use constitute the acceptance of the grant given to the public for federal land rights-of-way, and that once acceptance of the grant has been established, the grant shall be for the perpetual term granted by the congress of the United States.

(2) The only method for the abandonment of these rights-of-way shall be that of eminent domain proceedings in which the taking of the public's right to access shall be justly compensated. Neither the mere passage of time nor the frequency of use shall be considered a justification for considering these rights-of-way to have been abandoned.

Given the logistics it is important to note that both Idaho County and Valley County have some serious concerns about some of the alternatives. Certain factors addressed in alternatives proposed in the DEIS in fact interfere with the mandate of the County Sheriff. As occupancy of the man camp and protection from theft and vandalism is addressed in the DEIS alternatives, the Board must place emphasis on the financial hardships that could arise if the operators must leave the property open to theft and vandalism. The County Sheriff would have to expand normal patrol routes and be available for increased public-safety protections. It is unreasonable for the U.S. Forest Service to place the county in further financial hardship by implementation of alternatives that disregard common sense.

9

Occupancy by the operator and his or her employees will provide for self-policing and will increase public safety. The Board of County Commissioners would be of great assistance to the U.S. Forest Service if the Forest Service would simply understand the jurisdictional boundaries.

10

The federal government is exempt from paying the property taxes used to bolster local governmental financing of roads and schools. However, since 1908 policies have provided that federal lands contribute something toward this purpose. The amount is determined by the quantity of federally administered land in a county, how much revenue is produced from that land, and congressional appropriations. The shift in management emphasis has reduced federal revenue sharing, which has impacts on local government finances. Our county is predominately federally administered lands. The preferred alternative makes no provision to compensate Valley County or Idaho County for additional expenses that will be incurred by the counties because of alternative C and/or alternative D.

The NEPA requires federal agencies to analyze the environmental aspects of their proposed projects, activities, and other actions with potential environmental impacts. NEPA also requires that federal agencies responsible for preparing NEPA analyses and documentation do so in cooperation with state and local governments and other agencies with jurisdiction by law or special expertise. The White House Council on Environmental Quality's (CEQ) "cooperating agency" regulations implement that requirement.

Pursuant to the NEPA mandate that the U.S. Forest Service work with local governments, the agency proponent should immediately contact both of the Boards of County Commissioners for Idaho County and Blaine County, the counties most affected by this decision. Several jurisdictional issues arise from the proposal that is discussed herein.

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This request is consistent with guidance from CEQ, Chairman James L. Connaughton. As you are aware, Chairman Connaughton's February 5, 2002 memorandum to the heads of all federal agencies, emphasized the importance of including state, tribal and local governmental entities. Chairman Connaughton's memorandum is a guidance document designed to ensure that

state, tribal and local governments are included as "cooperating agencies" whenever appropriate during federal environmental reviews. Chairman Connaughton stated:

This memorandum reinforces President Bush's commitment to working with state, tribal and local governments and fostering a collaborative approach when making federal decisions that effect local communities. In situations where these government actors have particular expertise or share jurisdiction over a decision of the federal government, they should be formally welcomed as partners in the environmental review process.

Following are the CEQ Regulations at Title 40 Sec. 1506.2 Elimination of duplication with State and local procedures:

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

- *Joint planning processes.*
- *Joint environmental research and studies.*
- *Joint public hearings (except where otherwise provided by statute).*
- *Joint environmental assessments.*

With President Bush's commitment to working with local governments in the process of making federal decisions affecting local communities, the counties should be equal partners in the process. Actions such as this will make it possible for both Idaho County and Valley County to once again have jobs, money for roads, money for schools and the many other benefits to our local economies.

The United States Government, acting through the US Forest Service, has placed many items throughout the DEIS that are restrictive upon the operator and in some cases exceed Congressional authorization. Quite frankly, in Alternatives C and D the U.S. Forest Service is micro-managing the mining operation,

which will negatively interfere with county economics. The U.S. Forest Service crosses jurisdictional lines with county government in these alternatives. Does the U.S. Forest Service intend to reimburse the counties for any added expense?

10

The US Forest Service set forth alternatives for approval of the Plan of Operations, with the exception of Alternative B, which have the appearances of land use planning. In the State of Idaho the only entity that can dictate land use is the Board of County Commissioners. Throughout the DEIS the U.S. Forest Service attempts to close, manage and dictate use of public rights-of-ways. Your agency must adhere to State law.

10

At what location should the appropriate uses of federal lands be decided? Congress and the Chair of CEQ believe local government is part of the solution and the U.S. Forest Service can learn much through its equal partnership with the Boards of County Commissioners. Local governments would like to have more say, for obvious economic reasons that include commodity-related jobs and government employment as well as local finance from revenue sharing. The Idaho County and Valley County Boards of Commissioners should both be working as equal partners with the U.S. Forest Service in the processing of the Golden Hand Plan of Operations.

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The Board believes that the proposal by the operator is a project that will improve our county's economic situation. It must be stressed that we question lack of action by your agency, as we believe that this operation stems from a Plan of Operations submitted in 1986 by American Independence Mines and Minerals, Inc.

The untimely processing of an important project such as this, from 1986 to 2003, is a gross-imbalance of time between introduction of the project and the implementation and commencement of the NEPA process. Both a Social Impact Analysis and Civil Rights Impact Analysis are required components of the environmental analysis process and should be exclusively included in the Golden Hand EIS. The counties, both Idaho and Valley, should have been involved in this process for the DEIS and should be in the future part of that FEIS process.

11

Idaho County, just as Valley County, believes that a timely approval process is of the essence and relief to the operator is warranted. The Idaho County Board of County Commissioners must state that the only viable, and our preferred, alternative is alternative "B".

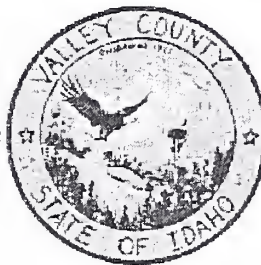
Sincerely,

Pat Holmberg, Chairman
Idaho County Commissioners

Valley County Board of County Commissioners

P. O. Box 1350 / 219 North Main Street
Cascade, Idaho 83611-1350

TEL 208-382-7100
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March 28, 2003

Ana Egnew
Krassel Ranger District
P.O. Box 1026
McCall, Idaho 83638

Via email at aeegnew@fs.fed.us

RE: The Plan of Operations for the Golden Hand #3 and #4 lode mining claims.

Dear Ms. Egnew:

The Valley County Board of Commissioners certainly appreciates the extra effort you have shown to make them equal partners in this process. It is refreshing to personally discuss these issues with you, not only to get your point of view, but to explain ours.

With President Bush's commitment to working with local governments in the process of making federal decisions affecting local communities, the counties should be equal partners in the process. Actions such as this will make it possible for both Valley County and Idaho County to once again have jobs, money for roads, money for schools, and the many other benefits to our local economies.

The Board emphatically states that no roads should be closed, regulated or restricted without coordination with the Valley County and Idaho County Boards of County Commissioners. Such coordination should be requested in writing and the U.S. Forest Service proponent should schedule an appearance before the Commission to discuss the matter. As you are aware, most of the National Forests are saturated with RS 2477 rights-of-way that were established and accepted by use. The RS 2477 right-of-way grant was made

directly between Congress and the grantee, which was usually the public or a county, and did not involve any Executive Branch agency in any way.

Public use forms a basis for acceptance of the grant. There is no limitation on the nature of use necessary to perfect a highway right-of-way under R.S. 2477. A road need not be heavily traveled to constitute a highway. RS 2477 was a self-executing law and the grant was made when the conditions were met. The grant is a property right and becomes the "dominant estate" over that portion of the public lands.

It is important to note that any surface destruction, obstruction, closure, or interference with the state/county management of any public right-of-way, regardless of the ownership or administration of the land beneath public rights-of-way, is a violation of State of Idaho Code, Title 40. The Board of County Commissioners, in conjunction with the County Sheriff, has the responsibility for the public's safety, health and well-being. The responsibility and jurisdiction for law enforcement is that of the County Sheriff. It is simply common sense that the US Forest Service should approve the operator's proposal for the protection of property from theft and vandalism. The USFS must be well aware of the following:

3

The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their right and privileges as citizens or be absolved from their duties as citizens of the State. (16 U.S.C. 480) 1897

The Board must reiterate the following, found in Title 40 of Idaho Code:

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(2) *The only method for the abandonment of these rights-of-way shall be that of eminent domain proceedings in which the taking of the public's right to access shall be justly compensated. Neither the mere passage of time nor the frequency of use shall be considered a justification for considering these rights-of-way to have been abandoned.*

Certain factors addressed in alternatives proposed in the DEIS in fact interfere with the mandate of the County Sheriff. As occupancy of the man camp and protection from theft and vandalism is addressed in the DEIS alternatives, the Board must place emphasis on the financial hardships that could arise if the operators must leave the property open to theft and vandalism. The County Sheriff would have to expand normal patrol routes and be available for increased public-safety protections. It is unreasonable for the U.S. Forest Service to place the county in further financial hardship by implementation of alternatives that disregard common sense. Occupancy of the man camp would also decrease the traffic impacts to the access road.

3

Occupancy by the operator and his or her employees will provide for self-policing and will increase public safety. The Board of County Commissioners would be of great assistance to the U.S. Forest Service if the Forest Service will simply understand the jurisdictional boundaries.

The federal government is exempt from paying the property taxes used to bolster local governmental financing of roads and schools. However, since 1908 policies have provided that federal lands contribute something toward this purpose. The amount is determined by the quantity of federally administered land in a county, how much revenue is produced from that land, and congressional appropriations. The shift in management emphasis has reduced federal revenue sharing, which has impacts on local government finances. Our county is predominately federally administered lands.

At what location should the appropriate uses of federal lands be decided? Congress and the Chair of CEQ believe local government is part of the solution and the U.S. Forest Service can learn much through its equal partnership with the Boards of County Commissioners. Local governments would like to have more say, for obvious economic reasons that include commodity-related jobs and government employment as well as local finance from revenue sharing. The Valley County and Idaho County Boards of Commissioners should both be working as equal partners with the U.S. Forest Service in the processing of the Colden Hand Plan of Operations.

1

In general, the United States Government, acting through the US Forest Service, has placed many items throughout the DEIS that are restrictive upon the operator and in some cases exceed Congressional authorization. Quite frankly, in Alternatives C and D the U.S. Forest Service are micro-management of the mining operation, which will negatively interfere with county economics. The U.S. Forest Service crosses jurisdictional lines with county government in these alternatives. Does the U.S. Forest Service intend to reimburse the counties for any added expense?

3

The US Forest Service set forth alternatives for approval of the Plan of Operations, with the exception of Alternative B, which have the appearances of land use planning. In the State of Idaho the only entity that can dictate

land use is the Board of County Commissioners. Throughout the DEIS the U.S. Forest Service attempts to close, manage and dictate use of public rights-of-ways. Your agency must adhere to State law.

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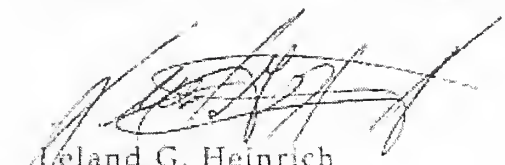
The Board believes that the proposal by the operator is a project that will improve our county's economic situation. It must be stressed that we question lack of action by your agency, as we believe that this operation stems from a Plan of Operations submitted in 1996 by American Independence Mines and Minerals, Inc. The untimely processing of an important project such as this, from 1996 to 2003, is a gross-imbalance of time between introduction of the project and the implementation and commencement of the NEPA process.

That being said, a timely approval process is of the essence and relief to the operator is warranted. The Valley County Board of County Commissioners must state that the viable, and our preferred, alternative is "B".

6

Respectfully submitted,

For the Valley County Commissioners,



Leland G. Heinrich,
Valley County Clerk



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 842-2253

April 22, 2003

Quinn Carver, District Ranger
Payette National Forest
Krassel Ranger District
P.O. Box 1026
McCall, Idaho 83638

RE: Golden Hand DEIS Comments

Dear Mr. Carver:

The Nez Perce Tribe submits the following comments on the Draft Environmental Impact Statement (DEIS) on the Golden Hand Plan of Operations to the Krassel Ranger District of the Payette National Forest (Forest) for consideration. The Tribe would like to thank the Forest for the meeting that occurred last week. We believe that this technical-level consultation was helpful for the Tribe to better understand the project, as well as clarifying our concerns.

The project area for proposed mineral exploration is located within the Big Creek drainage in the Frank Church River of No Return Wilderness Area (Wilderness Area). The Wilderness Area is the largest wilderness within the contiguous United States. As such, the Wilderness Area has functioned as a conservation reserve that has allowed ecosystem processes to occur naturally. The Wilderness Area accounts for a significant portion of the entire Middle Fork of the Salmon River and serves as habitat strongholds for multiple species of fish and wildlife (Servheen et al. 2001). The Big Creek drainage is the largest tributary stream within the Middle Fork of the Salmon River drainage. Servheen et al. (2001) reported that some wilderness streams have habitat limitations related to past mining, grazing, road construction, channel alterations, and fine sediment that affect native salmonids and other sensitive aquatic species. Headwater reaches in Big Creek and Monumental Creek, both in the Big Creek drainage, have been identified as having previous sediment related habitat impacts.

Native fish species present in the Big Creek drainage include spring and summer chinook salmon (*Oncorhynchus tshawytscha*), steelhead (*O. mykiss*), bull trout (*Salvelinus confluentus*), westslope cutthroat trout (*Salmo clarki*), mountain whitefish (*Prosopium williamsoni*), and other non-game species. Stream-type chinook salmon and steelhead smolts and adults both must migrate 700 plus miles to and from the ocean to complete their complex life cycle. These long run salmon and steelhead populations are considered very unique (Servheen et al. 2001). Kucera and Blenden

(1999) have reported that three of the chinook salmon index populations in the Middle Fork Salmon River exhibited highly significant declines in abundance since 1957, as did the Big Creek salmon spawning aggregate. All of these salmon populations were characterized as being in significant decline, at low levels of abundance, and at high risk of localized extinction (Oosterhout and Mundy 2001). NMFS (2000) estimated that the population growth rates (λ) for these populations during the 1990's were all substantially less than needed for these fish to replace themselves. Salmon runs in 2001 and 2002 have seen somewhat larger returns to tributary streams.

Chinook salmon, steelhead, and bull trout are currently listed as threatened under the Endangered Species Act (ESA). These three listed species plus westslope cutthroat trout are present in the Beaver Creek drainage and the mainstem of Big Creek, and would be affected by the current project.

The Tribe is concerned about the Forest's willingness to select a preferred alternative that allows motorized access into the Wilderness Area in a manner that degrades threatened fish habitat. This approach is in conflict with the ESA, regional fish recovery efforts, maintaining Tribal trust responsibilities, and two NOAA Biological Opinions (NMFS 1995, NMFS 2000). Our review of the DEIS indicates that Alternative A, the no-action alternative, is best suited to protect the wilderness nature of the landscape, protect natural resources, and honor obligations to the Tribe by preserving and not impacting treaty-reserved resources, including fish. Alternatively, the Tribe believes that Alternative D appears to have the minimum impacts to wilderness characteristics and natural resources, while still allowing access for mining purposes.

Impacts of Project on Tribal Resources

Since time immemorial, members of the Nez Perce Tribe have practiced their religion, fished, hunted, gathered, and grazed animals in lands throughout northeastern Oregon, southeastern Washington, and much of Idaho, including the lands and waters that make up the Frank Church River of No Return Wilderness Area (Wilderness Area). Many of the fish taken from these streams and rivers include anadromous fish such as chinook, coho, sockeye, steelhead, Pacific lamprey, as well as resident fish such as bull trout and westslope cutthroat trout. The fishing, hunting, and gathering activities did and still do play a major role in the culture, religion, subsistence, and commerce of the Tribe.

In 1855, the United States negotiated a treaty with the Nez Perce Tribe. In Article 3 of this treaty, the Nez Perce Tribe explicitly reserved to themselves certain rights, including the exclusive right to take fish in streams running through or bordering the Reservation and "the right to fish at all usual and accustomed places in common with citizens of the Territory; and of erecting temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed lands."

Much of the lands and waters composed of the Wilderness Area are part of the vast territory ceded by the Nez Perce Tribe, over which the Tribe has treaty-reserved rights. The Wilderness Area provides irreplaceable habitat for tribal resources, including imperiled stocks and runs of fish, as well as culturally significant plants, elk, deer, moose, and other species. The fish and other natural

resources impacted by this project comprise tribal resources subject to the exercise of the Tribe's treaty-reserved rights.

The treaty-reserved right to take fish and to take other resources reserved by the Nez Perce Tribe presumed the continued existence of those resources. Thus, the treaty secures to the Nez Perce Tribe the continued existence of those biological conditions necessary for the resources that are the subject matter of the treaties. Harm to these resources and their habitat will harm the Tribe and its members.

Unfortunately, many of the resources sacred to the Tribe are in risk of disappearing. The salmon, steelhead, and bull trout that occupy the Snake River Basin have all been listed as threatened or endangered under the ESA. Although there are many causes for this decline, removal of vegetation, soil degradation, and alteration of watershed hydrology caused by logging, mining, road construction, water withdrawals, and grazing have contributed to the decline in salmon survival in freshwater habitats by increasing fine sediment, reducing pool volume and frequency, increasing water temperature, and reducing base flows. As a result of this decline, the Tribe harvests less than one-percent of traditional harvest levels. The decimation of salmon runs has seriously impacted the tribal economy.

Treaty tribes, such as the Nez Perce, have been recognized as managers of their treaty-reserved resources. *U.S. v. Washington*, 384 F. Supp. 312, 339-40, 403 (W.D. Wash. 1974). As a manager, the Nez Perce Tribe has devoted substantial time, effort, and resources to the recovery and co-management of treaty-reserved resources within its treaty territory. The Nez Perce Tribe, through its own fisheries program and, through the Columbia River Inter-Tribal Fish Commission (CRITFC), has developed and implemented a comprehensive salmon recovery plan.¹ Tribal efforts have had substantial impacts on recovery of imperiled species. For example, coho salmon, previously eradicated from the Snake River Basin, have been reintroduced due to the Nez Perce Tribe's restoration efforts.

The Tribe is extremely concerned that the Forest has identified a preferred alternative that could adversely impact tribal trust resources, as well as threaten efforts of tribal, state, and federal fisheries managers to restore imperiled fisheries resources. The DEIS admits that Alternative C will have an adverse effects on cultural resources and tribal trust responsibilities. No level of loss of tribal trust resources is acceptable to the Tribe. As further described below, the DEIS indicates that existing measures to minimize impacts to ESA-listed species will not be followed and that a significant amount of stream sedimentation will occur. Again, this alternative will adversely impact treaty-reserved fisheries resources and is not acceptable. The FEIS should select an alternative that minimizes any impacts to tribal trust resources and tribal cultural resource sites.

Effects on Fisheries Resources

¹ See CRITFC, WY-KAN-USH-MI, WA-KISH-WIT, SPIRIT OF THE SALMON: THE COLUMBIA RIVER ANADROMOUS FISH RESTORATION PLAN OF THE NEZ PERCE, UMATILLA, WARM SPRINGS AND YAKAMA TRIBES (1996) <<http://www.critfc.org/text/trptext.html>>.

The project area in Beaver Creek supports listed chinook salmon, steelhead and bull trout which would be adversely affected by the proposed mining plan of operation. Westslope cutthroat trout are also present in Beaver Creek and mountain whitefish and other fish species are commonly found throughout the Big Creek system. Fisheries resources concerns are related to the effects of sediment on threatened fish habitat, on a temporal and spatial basis, and the analysis of effects which affect federal trust responsibilities. There is further concern that toxic chemicals, fuels and mining chemicals, being transported or stored could find their way into fish bearing streams and have toxic effects.

5

The Tribe is extremely concerned that the Forest appears to disregard Endangered Species Act protections that prohibit new road building in RHCAs, prohibit widening roads by increasing cut and fill slope areas, and reopening of closed and revegetated roads. See DEIS at 3-100. The preferred alternatives appears to violate all these prohibitions. The Forest should select an alternative that meets these ESA requirements.

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Analysis presented in the DEIS is based on limited information upon which to assess status and trends in fish populations, fish habitat and water quality in the project area. Similarly, the effects analysis due to past and present management actions is based on professional judgement. It points out the need to develop better resource monitoring efforts on National Forest lands, and models to quantitatively assess impacts.

Numerous authors have discussed the potential negative effects of sediment on fish and supporting fish habitat (Everest et al. 1987, Bjornin et al. 1977, Irving and Bjornin 1984, Reiser and White 1988, Alexander and Hansen 1986, Chapman and McLeod 1987, and Griffith and Smith 1993). Potential effects of increased sedimentation include sedimenting in of spawning substrate, effects on incubating eggs and embryos, silting in of life stage specific seasonal habitat (gravels, cobble and pool habitat), and effects on aquatic invertebrate productivity. The preferred alternative (Alternative C) would produce a projected sediment delivery to streams of one ton per year, which is 133 times greater than the natural sediment yield from this land type. In contrast, expected sediment delivery to streams under either Alternative A or Alternative D would be 0.0075 tons per year and would approximate the natural sediment yield from the land type. The DEIS states that "increased sediment would adversely affect fish and fish habitat", and would directly affect lower Coin Creek, an unnamed tributary to Coin Creek and Beaver Creek. Increased sediment would also affect stream fish communities and fish habitat in the mainstem of Big Creek, downstream of the confluence of Beaver Creek, which the analysis fails to take into account.

7

The DEIS largely provides a qualitative assessment of potential sedimentation effects described as "these effects may degrade fish habitat in the wilderness portion of the project and analysis area." The analysis has not quantified what effect increased sedimentation rates would have on critical life stages, temporally or spatially, of three threatened fish species.

8

Further, cumulative affects of accessing mining claim numbers 1 and 2 to conduct exploratory work, while identified, have not been adequately described. Sedimentation affects that further degrade the habitat of threatened chinook salmon and steelhead are not consistent with regional recovery and stock restoration programs. In fact they serve to exacerbate recovery and delisting of

these species and are contrary to offsite mitigation strategies as described in the Federal Columbia River Power System Biological Opinion (NMFS 2000).

The analysis of the effects that are provided are qualitative assessments of impacts on threatened fish habitat based on professional judgement. The Tribe believes the conducted analysis is inconsistent with selection of Alternative C as the preferred alternative.

In addition to the issues addressed above, the Tribe has identified the following issues of concern that should be addressed in the FEIS:

- The Forest states that Alternative C may degrade fish habitat in the wilderness by delivering one ton of sediment per year to the streams that would directly affect lower Coin Creek, an unnamed tributary to Coin Creek and Beaver Creek. The analysis did not consider impacts to the mainstem of Big Creek downstream of the confluence of Beaver Creek. 7
- Cumulative effects of accessing mining claim numbers 1 and 2 have not been adequately described, and may cause greater adverse impacts. Three additional mineral operations exist in the analysis area with potential for sediment production, fuel and reagent spillage. 9
- The NMFS (1995) Biological Opinion requires that a watershed analysis be conducted prior to approving plans of operation for "likely to adversely affect" actions. No watershed analysis has been prepared. 10
- Streams in the analysis area are "Tier 2 Waters" and must be maintained and protected unless an analysis and public review process concludes degradation is necessary for social and economic reasons, and that other less degrading alternatives are not available (IDAPA 58.01.02(051)). Selection of Alternative C would degrade stream habitat of three threatened fish species, and overlooks two lesser environment impacting alternatives (A and D). 11
- In some areas of the DEIS, Alternative C is rationalized as the preferred choice because it results in fewer sediment-related impacts than Alternative B. Although true, it loses focus that Alternative C causes additional impacts in the wilderness on threatened species, when other less invasive alternatives have been identified (Alternatives A and D).
- Alternative C does not comply with all PACFISH mineral direction items. 12
- Alternative B has the most detrimental impacts to the wilderness and threatened fish habitat and is projected to deliver five tons of sediment to the stream on an annual basis or 680 times the natural sediment yield from the land type.
- Alternative B does not conform to the State of Idaho Antidegradation Policy because less degrading alternatives are available.
- It is unclear what authority the Forest has in restricting the amount and duration of water withdrawn pursuant to state law. Please explain this authority in the FEIS. In addition, the FEIS should assume that the maximum amount of water allowed under state law is withdrawn for the purposes of assessing resource impacts. 13

Ore Reserve Analysis

Appendix B of the DEIS (Surface Use Analysis) describes the ore reserve analysis from the project area that directly relates to the validity of the claim. Several previous Golden Hand Mine claims were contested based on mineral reports, and were ruled to be invalid. Several other claims were ruled to be valid. Calculation of the reserves available and the economic analysis by the American Independence Mines and Minerals, Inc. (AIMM) consultant appears to contain contradictions and assumptions that bring to question the accuracy of the calculations. The Forest Service analysis states "Knowing that the mineral reserves were calculated partly from surface and underground sampling that shows significant areas below cutoff grades and on inference drawn partly from that data and from other contradictory information, the Forest Service is justified in proceeding cautiously to evaluate proposed uses of the surface associated with efforts to fully delineate the deposit".

Substantial questions exist on whether any valid ore reserves exist on Golden Hand Mine claims within the Wilderness Area. Given major policy questions of entering a wilderness area for mineral exploration and mining impacts on threatened chinook salmon, steelhead and bull trout, there needs to be certainty whether valid ore reserves even exist.

14

Given the level of uncertainty in regards to the mineral claims and the risk to imperiled species, water quality, wilderness characteristics, tribal treaty rights, and cultural resources, the Forest must select an alternative that contains the highest level of protection to resources and minimizes impacts to fisheries, water quality, and wilderness characteristics.

NEPA Concerns

NEPA requires agencies to "[s]tudy, develop, and describe appropriate alternatives to recommended courses of action," 42 U.S.C. § 4332(c), to "[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment," 40 C.F.R. § 1500.2(e), and to "[r]igorously explore and objectively evaluate all reasonable alternatives," 40 C.F.R. § 1502.14(a). This development and assessment of alternatives has been described as "the heart of the environmental impact statement." 40 C.F.R. § 1502.14. Agencies, such as the Forest, must look at every reasonable alternative, with the range dictated by the "nature and scope of the proposed action," *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982), and sufficient to permit a reasoned choice and informed decision making. *Save Lake Washington v. Frank*, 641 F.2d 1330, 1334 (9th Cir.1981).

The Tribe is concerned that the Forest did not adequately consider other alternatives that may minimize impacts to fisheries and water quality, as well as long term impacts to wilderness characteristics. The DEIS indicates that access by helicopter was eliminated from detailed consideration because of costs and other impacts. See DEIS at 2-24. However, without the detailed analysis, it is difficult for the Tribe and the public to understand what are the costs of this alternative compared to the others and how the short-term impacts of helicopter use compare to the long-term impacts of road building. The Tribe believe that a more detailed assessment of this alternative is warranted to help the agency, the Tribe, and the public understand all alternatives available.

15

Other Miscellaneous Concerns/Comments

In addition to the comments identified above, the Tribe has identified the following comments and concerns:

- The DEIS appears to be missing an economics analysis indicating the cost to the Forest for project implementation and mitigation, the expected costs to the mine operator, as well as other socioeconomic and natural resource costs associated with the project (i.e., loss of wilderness characteristics and impacts to fisheries). | 16
- A detailed estimated time line of implementation of actions would be helpful to help understand how projects would occur. | 17
- The Tribe requests a copy of all Biological Opinions produced related to this project. | 18
- Alternative C calls for 3 Forest Plan amendments. There is no explanation in the DEIS how these amendments can be characterized as "non-significant." A explanation of how this determination was made should be included in the FEIS. | 19
- What sort of mitigation will be used to address noxious weeds? Will chemical or biocontrol agents be available to address the potential spread of noxious weeds into a wilderness area? | 20
- A map containing other active and potential mining claims within project area watersheds would be helpful to understand cumulative effects. | 21

As indicated above, the Tribe believes that the Forest should select an alternative that minimizes the impacts of this project on tribal resources, water quality, fisheries, and the wilderness characteristics of the Wilderness Area. Please contact Rick Eichstaedt, Staff Attorney, in the Office of Legal Counsel (208-843-7355) regarding any questions and concerns with these comments.

Sincerely,

Samuel N. Penney

Samuel N. Penney
Chairman

cc: NOAA Fisheries
Environmental Protection Agency

**Comments to the Draft Environmental
Impact Statement
Golden Hand No. 3 and No. 4 Lode
Mining Claims Proposed Plan
of Operations**

**Submitted by
American Independence Mines
and Minerals Co. (AIMMCO)**

Submitted: April 21, 2003

TABLE OF CONTENTS

OVERVIEW	5
COMMENTS.....	6
I. The DEIS Fails To Analyze Reasonably Available Alternatives.....	6
II. Alternative B1 — 1996 Plan With Reasonable Mitigation Imposed.....	7
A. Summary.....	8
B. Detailed Description.....	10
III. Alternatives A, C And D in the DEIS Are Illegal and Cannot Be Selected As Preferred Alternatives.....	14
A. Background.....	14
B. Alternative A is not a viable alternative. It is merely a baseline.....	16
C. Alternatives C and D impermissibly interfere with AIMMCO's right to mine.....	16
1. Forest Service regulations limit the authority of the Forest Service to modify the 1996 Plan only if necessary to minimize adverse environmental impacts on National Forest System surface resources.....	17
2. The Forest Service may not regulate mining activities in such a way as to materially interfere with AIMMCO's mining operation.....	17
3. Under Forest Service regulations, an operator is required to look as far forward as possible in describing its mining operation generally. The Forest is to approve the plan and then enforce environmental protection measures without meddling in the mining operation.....	18
4. The "Surface Use Analysis" employed by the Forest Service to justify Alternatives C and D materially interferes with AIMMCO's right to mine.....	19
a) Introduction.....	19
b) The SUA inappropriately questions the validity of the claims.....	19
c) The sequenced approval called for under Alternatives C and D is really a mechanism for the Forest Service to deny the 1996 Plan based on a determination that the claims are invalid without a hearing.....	20
d) The sequenced approval suggested by the SUA and incorporated into Alternatives C and D does not allow AIMMCO to meet its defined objective of delineating the already established ore deposit on the claims.....	21
e) Conclusion — If adopted, Alternatives C or D would materially interfere with AIMMCO's right to mine.....	23

D.	Alternatives C and D propose road mitigation measures that are not rationally related to minimizing any adverse environmental effects associated with the 1996 Plan on roads over which the Forest Service does not have jurisdiction.....	23
1.	Under Forest Service regulation, AIMMCO's use of public for mining access is beyond the scope of issues the Forest Service can consider in approving a plan of operations.....	24
2.	All of the roads that AIMMCO will use are public roads under jurisdiction of Valley and Idaho Counties.	24
3.	Under Alternatives C and D, the Forest Service is requiring expensive road improvement projects that have no rational connection to AIMMCO's activities.	24
a)	Introduction.....	24
b)	The Forest Service through regulation seeks to have AIMMCO bear a burden created by the public that must be born by the public.	25
c)	Regulation that goes too far is a taking.....	25
E.	Alternative C arbitrarily precludes occupancy at the mine site.	26
1.	Introduction.....	26
2.	Use of the existing bunkhouse will enhance the wilderness values over all other alternatives.....	27
3.	The Forest Service has the legal authority to approve occupancy under an operating plan.....	28
4.	Occupancy at the bunkhouse is the only alternative that preserves the structure and that is compliant with the Central Idaho Wilderness Act.	28
5.	According to the Forest Service, the fact that people in other occupations suffer the inconvenience of long commutes justifies inflicting the same inconvenience on AIMMCO.....	29
IV.	Alternatives B and B1 are complaint with all environmental indicators.	30
A.	Introduction.....	30
B.	Modified Table S-2 - Comparison of Alternatives by Effect to Significant Issues for the Golden Hand Mine Project.....	31
C.	Alternatives B or B1 satisfy all Forest Service environmental indicators. Alternatives A, C and D do not.....	34
1.	Issue #1 – Mineral Development	34
a)	Only Alternatives B and B1 Allow AIMMCO to obtain necessary geologic information.....	34
b)	Only Alternatives B and B1 allow activities reasonably incident to mining.	34
c)	All the alternatives except Alternative A comply with PACFISH.	35

2.	Issue #2. Roads and Access Management	35
a)	When existing roads are treated as “roads” instead of “trails” the amount of proposed road construction is about half of a mile.....	35
b)	The 1996 Plan never proposed widening the existing roads.....	36
c)	Alternatives B and B1 comply with all Road and Access Management Indicators.....	36
3.	Issues #3 and 4. Wilderness Character and Wilderness Experience.....	37
4.	Issue #5. Water Quality.....	37
a)	Alternatives B and B1 Maintain Water Quality in Smith Creek and Logan Creek.....	38
b)	The Golden Hand Alternatives B and B1 Maintain Water Quality in Coin Creek and Beaver Creek	39
c)	The risk of metal contamination is de minimus and can be monitored under any alternative	39
5.	Issue #6. Riparian Areas and Wetlands	39
6.	Issue #7. Fish Populations and Habitat of Concern	40
a)	Large Woody Debris.....	40
b)	Fine Sediment Levels.....	40
c)	Stream Flow	41
d)	Chemical Contamination	41
e)	Road Density and location.....	41
7.	Issue #8. Wildlife Populations and Habitat.....	41
8.	Issue #9. Noxious Weed Establishment and Spread.....	41
9.	Issue #10. Cultural Resources and Tribal Trust Responsibilities	42
D.	The Golden Hand Alternative B Requires no Amendments to the PNF	42
	CONCLUSION.....	43
	Appendix A – Kleinfelder Report.....	44
	Appendix B – Criticism of Abbay Ore Reserve and Value Calculations	45
	Appendix C - Excerpts from the Project Record.	53
	Appendix D – Judge Winmill’s Order.	54

OVERVIEW

American Independence Mines and Minerals Co. ("AIMMCO") submits these comments to the Draft Environmental Impact Statement, dated February 24, 2003 ("DEIS"), on the Golden Hand No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations (the "1996 Plan").

In summary, the DEIS currently is inadequate and not compliant with Judge Winmill's Order dated August 9, 2002 (included as Appendix D) because it fails to consider reasonably available alternatives and it selects an illegal alternative as the preferred alternative. As it stands now, the DEIS reviews four alternatives: the proposal in the 1996 plan made to look as negative as possible (Alternative B), two proposed modifications to the 1996 Plan that all are illegal intrusions into AIMMCO's right to mine (Alternatives C and D), and the required no-action alternative (Alternative A). However, to be a meaningful—and legal—document, the final EIS must consider alternatives that are authorized by law and Forest Service regulations. To aid in this process, AIMMCO is proposing an additional alternative for analysis in the DEIS.

This alternative, which we call Alternative B1, will approve the activity proposed in the 1996 Plan with reasonable mitigation measures imposed. In summary, Alternative B1 does the following: 1) approves all the access and mining development activities proposed in the 1996 Plan, 2) clarifies AIMMCO's consistent intention that its activities will comply with applicable law, 3) clarifies that road widening is not requested in the plan except in very limited areas, and 4) borrows from the mitigation proposed in Alternative C, eliminating those measures that are illegal intrusions into AIMMCO's right to mine and those that do not respond to any demonstrated adverse environmental effects associated with implementation of the 1996 Plan. The result is an alternative that strikes the balance between AIMMCO's right to mine its valid mining claims and the Forest Service's obligation to manage and protect surface resources.

Alternative C, the currently identified preferred alternative by the Forest Service, fails to strike this balance by imposing severe, detrimental and unnecessary restrictions on AIMMCO's mining development activities that materially interfere with AIMMCO's right to mine. Alternative C would give the Forest Service continuing authority, after plan approval, to disapprove mining activities or to bar proposed activities that the Forest Service believes are not necessary. Nothing in the law give the Forest Service this authority. This is especially true for claims that already have been adjudicated as valid mining claims over the contest by the Forest Service. As such, the sequenced approval process described in Alternative C is not a legal option.

Additionally, the environmental review of the DEIS conducted by Kleinfelder on behalf of AIMMCO, attached as Appendix A, demonstrates that the DEIS and Project Record do not support many of the mitigation measures or plan changes that Alternative C seeks to impose. Alternative C does this by requiring disproportionate mitigation measures where any "potential" impact is identified, regardless of whether that impact has any significant or even measurable adverse environmental impact. And in the case of the Smith Creek roads, Alternative C goes so far as to require costly remediation to public, out-of-wilderness roads that have nothing to do with AIMMCO's proposed mining, and for which there is no identified adverse environmental impact. This is not legally permissible and is in direct violation and Judge Winmill's Order.

Alternative C also arbitrarily requires the considerable and wasteful expense of daily commutes to and from the mine site where an existing and useable bunkhouse exists adjacent to the claims. There is no rational basis for this requirement. In addition to running up AIMMCO's costs, requiring daily motorized commutes through the wilderness unnecessarily creates adverse impacts to wilderness values and experience. Housing the crew in an existing bunkhouse that predates the creation of the wilderness area by several decades is the obvious way to minimize wilderness impacts.

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Because of these legal infirmities, a final EIS or Record of Decision ("ROD") that selects Alternative C as the preferred alternative would violate Judge Winmill's Order to complete processing of the 1996 Plan by May 1, 2003 so that AIMMCO can begin its mining operations this summer. Implicit in the Order is that the Forest Service process the 1996 Plan in a legal manner. The NEPA process by which the EIS is being created is simply a procedural process and cannot be used to justify a decision that violates substantive law. As currently drafted, the DEIS violates substantive law.

7

By choosing either Alternative B or B1, the Forest Service would make the final EIS compliant with the law and enable the issuance of a legal ROD. In addition to meeting legal requirement, the basis for selecting Alternative B or B1 as the preferred alternative is summarized in Modified Table S-2 beginning on page 31. Modified Table S-2 is modeled after Table S-2 in the DEIS, which is a visual overview of the pros and cons of the various alternatives. Modified Table S-2 adds several review categories and removes unwarranted biases in Table S-2. It demonstrates that Alternatives B and B1 are the only ones that are legal and that implementation of either alternative does not create any adverse environmental impacts to surface resources.

8

COMMENTS

These comments are made by AIMMCO in a good faith effort to engage collaboratively with the Forest Service to identify an action alternative on the 1996 Plan that balances AIMMCO's right to mine with the Forest Service's need to protect surface resources. As the DEIS stands now, that balance has not been struck. These comments invite the Forest Service to amend the DEIS and issue a ROD based on Alternative B or B1 that respects AIMMCO's right to mine its validated mining claims while utilizing reasonable mitigation measures for potential adverse effects that could result from implementing the 1996 Plan.

9

I. The DEIS Fails To Analyze Reasonably Available Alternatives.

A notable deficiency in the DEIS is its lack of consideration of reasonable alternatives. In preparing the EIS on the 1996 Plan, the Forest Service is required "analyze alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public." 40 C.F.R. § 1502.14. This regulation goes on to require that the agency "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a) (emphasis added).

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The consideration of all reasonable alternatives is critical. In the case *Friends of Southeast's Future v. Morrison*, the Ninth Circuit Court of Appeals, noting that "the alternatives

analysis section is the ‘heart of the environmental impact statement,’” ruled that the “agency must look at every reasonable alternative within the range dictated by the nature and scope of the proposal. The existence of reasonable but unexamined alternatives renders an EIS inadequate.” 153 F.3d 1059 (9th Cir. 1998) (internal citations omitted, quoting 40 C.F.R. § 1502.14).

Implicit in this requirement to consider alternatives is that the agency consider some alternatives that are authorized by law. An EIS that devotes itself to the consideration of alternatives that are beyond the scope of the agency’s authority is not a useful document. The DEIS currently falls into this category: Alternative A, the no action alternative, while required by regulation, is not legal in this circumstance as it precludes mining where a right to mine exists. It is only a baseline. Alternative D for all practical purposes also is another no action alternative because it eliminates nearly all of the mining activities proposed for the claims. It also is illegal.

Although Alternative C purports to approve “nearly all of [AIMMCO’s] proposed plan” (DEIS, p. 2-14), it also violates the law by eliminating proposed mining activities, limiting other activities pending future approval (and thus more delay) by the Forest Service, imposing out-of-wilderness road improvements that are not related to remedying any adverse impact, let alone one that would be created by AIMMCO, and arbitrarily requiring daily commutes to the mine site rather than housing the crew in an existing bunkhouse. A detailed explanation of the problems with Alternative C is contained in Section III.

Thus, as it stands now, Alternative B is the only viable alternative in the DEIS. It must be chosen as the preferred alternative unless the Forest Service analyzes other alternatives that comply with the Forest Service’s legal authority and meet the goal of starting “. . . work during the 2003 mining season . . .” Judge Winmill’s Order.¹

To assist the Forest Service in completing an EIS that conforms to the requirement to consider reasonably available alternatives, AIMMCO, in conjunction with its geology and environmental consultants, is proposing Alternative B1, which adopts reasonable mitigation measures to the activities proposed in the 1996 Plan. It borrows from Alternative C in many respects while still respecting AIMMCO’s right to mine and eliminates those measures from Alternative C that disapprove mining operations and are not authorized by law. Alternative B1 is explained in the following section.

II. Alternative B1 — 1996 Plan With Reasonable Mitigation Imposed.

This section describes a new alternative, Alternative B1, that should be included in the final EIS. This alternative differs from Alternative B in the following ways: 1) it removes the unwarranted presumption that AIMMCO is going to widen roads to 12 feet; 2) it recognizes the Best Management Practices for Mining in Idaho (BMPs) specifically proposed by AIMMCO in the 1996 Plan for the Smith Creek roads and; 3) it incorporates the implicit presumption always included in the 1996 Plan that AIMMCO will comply with applicable law as it conducts the activities outlined in the 1996 Plan, including the use of BMPs.

¹ If the Forest Service declines to consider the reasonable alternative we propose, then the preferred alternative must be Alternative B because Alternative C illegally intrudes on AIMMCO’s right to mine.

Alternative B1 is summarized in the following Chart B1 and is described in detail in this section. We have attempted to make it as easy as possible for the Forest Service to incorporate this section by drafting it in the same manner as employed by the Forest Service in the DEIS. This is not an endorsement but merely our effort to facilitate necessary changes to the DEIS in the short time period caused by the issuance of the DEIS so late in the process.

A. Summary

CHART B1

Component	Alternative B-1 Proposed Plan with Reasonable Mitigation
Scope of Operations	New road construction, drilling, trenching, excavation of bulk samples from underground, motorized access.
Access & Road Maintenance	FR 371 & 373: maintain current road width (slough and vegetation removed), install water bars and armoring at creek crossings. Pueblo Summit to GH: restore current road to 1984 width (slough and vegetation removed), Idaho BMPs employed; Restore on-claim roads to original pre-1984 widths.
Road Construction	Approximately 0.5-0.6 miles w/ Idaho BMPs. Including 25-foot stream buffer.
Development Work	31 drill sites and 5 trench sites sequenced as determined by AIMMCO, all on roadbeds unless determined to be necessary to construct new spur road as presented in 1996 Plan, all using Idaho BMPs, clean out existing adits (3), haul max 10 dump truck loads ore to Walker Millsite for testing

Vehicles and Equipment	All vehicles sized to operate safely without widening roads, one round trip per operating season for mining equipment unless breakdown requires new equipment, dump truck, bulldozer, road grader, air compressor (<600 cfm), light plant, backhoe/loader, drill rig, underground mining machinery, saws, generator
Hazardous Materials	Fuel < 250 gal. in sealed tank or barrel containers. Fuel storage on claim, outside RHCAs. Carry spill prevention kits and fire extinguishers. Day to day explosives if determined necessary by AIMMCO stored onsite in powder house or day box.
Timbers	Timber may be harvested on claims out of sight of trails or roads and out of RHCAs unless necessary for road construction or safety. AIMMCO to consider timely Forest Service suggestions for which trees to harvest
Work Crew and Housing	House up to 6 people in bunkhouse, maximum of 12 people on rare occasions, use existing outhouse, move from RHCA or install new pit toilet if determined to have adverse impact.
Timing and Duration	120 days or less each operating season for a period up to 10 years after final approvals obtained.
Water	Obtain legal entitlement to use water for mining. Use existing domestic right and diversion associated with bunkhouse.

Noxious Weed Management	Revegetation work with certified weed free seed, treat noxious weed investments
Reclamation – interim or seasonal	Remove all mining equipment, fill and reclaim trenches and holes unless necessary for following years' work
Reclamation - final	Backfill all drill holes. Recontour new roads approved in plan. Reseed disturbed areas with weed free native seed mix and mulch, Haul out vehicles, equipment and supplies.

B. Detailed Description.

This alternative modifies Alternative B in the DEIS by adding reasonable, proportional mitigation measures to the activities proposed in the 1996 Plan to minimize potential adverse environmental impacts on National Forest System surface resources. This alternative recognizes the established validity of the claims and allows AIMMCO to conduct all of the proposed development activities with conditions.

The activities proposed in the 1996 Plan can occur on the claims with the following clarifications:

- Roadbeds will not be widened but slough and vegetation encroachments onto existing roadbeds will be removed.² Switchbacks can be widened to a radius of 25 feet if determined necessary by AIMMCO.
- Vehicles will be restricted to sizes that would not require any additional road widening.
- Additional road maintenance will include the use of Idaho BMPs.
- Most roads work will be on existing roadbeds.
- Drill locations will be outside 25-foot stream buffers wherever possible and will include mitigation measures as described in State of Idaho BMPs.
- Underground work (clearing out, drilling, and possibly ore extraction) will be conducted at least three existing mine openings (adits).

²This is not a change to the 1996 Plan. Rather, it is a change to the Forest Service mischaracterization of the Plan. AIMMCO has proposed to restore the road from Pueblo Summit to the Golden Hand, and existing roads on the claims, to their condition in 1984. AIMMCO also has proposed to widen some switchbacks. The Forest Service imposed the 12-foot widening request on AIMMCO by determining itself that AIMMCO was planning to widen roads to fit some of its equipment. However, AIMMCO has never proposed wholesale road widening to accommodate any equipment or for any reason. See Section IV.C.2

Access and Road Maintenance

Access to the mining claims is on public Forest Roads (FR) 371 and 373 to the FC-RONR Wilderness boundary at Pueblo Summit. Road maintenance is limited to clearing slough on existing roads and removing vegetation encroachments. Roadbeds are not widened beyond removing slough and vegetation encroachments that have narrowed the existing roadbeds. Switchbacks may be widened to a radius of twenty-five feet if AIMMCO determines this is necessary to safely accommodate its vehicles. Vehicles and equipment will be limited to size that can safely operate on existing roadbed widths (and the 25-foot radius switchbacks). The roads cannot be widened to accommodate larger vehicles or equipment.

The existing roads will be maintained using Idaho BMPs. Stream crossings will be improved by extending the existing armoring if necessary and the roadbeds maintained by installing and maintaining water bars where necessary to direct water off the roads into vegetated areas and repairing existing drain gullies.

Comments from the counties on the DEIS have asserted jurisdiction over all the roads. Depending on the resolution of the jurisdictional question, the Forest Service may improve the gate at the Pueblo Summit including installation of boulders around the gate. If the Forest Service installs a gate, AIMMCO will be given a key. An informational sign will be installed at Pueblo Summit describing the mining operation. AIMMCO vehicles will be allowed access to the site.

Road Construction

This alternative allows the construction of about 0.5 to 0.6 miles of new roads on the claims. This description correctly identifies road construction where roads will actually be constructed, unlike the Forest Service DEIS, which disingenuously states that AIMMCO will be constructing 4 miles of roads in the wilderness where 3.5 miles of this "road construction" is actually clearing slough and vegetation from existing roads.

Where live vegetation has encroached into existing roads, it will be removed by cutting with chainsaws or by hand rather than uprooting.

New roads will be limited to 10 feet in width. Road routes, design and erosion control measures will comply with Idaho BMPs, including the 25-foot stream buffer for Class II streams (Coin Creek is a Class II stream), except for necessary fords, where BMPs will be used. New road construction in RHCAs will be avoided if at all possible.

Development Work

All of the development work in AIMMCO's proposed plan is approved including road clearing, road construction if necessary to reach drill or trench sites, underground mining from existing mine openings (currently there are 3 identified adits on the claims, not 2 as identified by the Forest Service), drilling at a maximum of 31 drill sites (with multiple holes at each site) and excavation of up to five trenches. The bulk samples obtained from drilling and the underground mining will be limited to 10 truckloads over the duration of the operation. All work will be done using Idaho BMPs. Waste rock from underground mining will be placed on existing waste

dumps. Trenches will be located on roads unless geology mandates different location. All trenches will be constructed in a way to minimize any channelized sediment delivery and will not be placed within 25 feet of live water.

Vehicles and Equipment

Vehicles used in the operation may include the following: pickup trucks, tandem drive flatbed truck, drill rig, haul truck, backhoe/loader, dump truck, bulldozer and road grader. Equipment will only be brought in if determined necessary for the year's activity. If necessary to reduce impacts, AIMMCO may use motorcycles or ATVs to access the claims. AIMMCO will also use a generator, an air compressor and assorted underground mining tools.

All vehicles will be sized to operate safely on existing roadbed widths. Heavy equipment will be limited to one round trip per season except for travel and work necessary for road maintenance activity and if the equipment needs to be replaced. Pickup truck or sport utility traffic would be limited to an average of 2 trips per day per week over the working season. It is anticipated that most days will not require vehicle traffic to and from the site.

Hazardous Materials

Same as described on page 2-14 through 2-15 in DEIS for Alternative C except that explosives use not subject to approval by Forest Service and explosives for day-to-day requirements may be stored onsite in secure day boxes or the existing powder house. Transport and storage will comply with applicable law.

Timbers

In accordance with the Wilderness Act of 1964, AIMMCO can use timbers on the claims if determined necessary for mining activities and if determined by AIMMCO that suitable timbers cannot economically be brought in from outside the wilderness. AIMMCO will alert the Forest Service when it needs to harvest a tree(s) on the claims for mining purposes and will consider the Forest Service's timely suggestions for which tree to harvest.

Work Crew and Housing

Same as described on page 2-6 in the DEIS. If the existing outhouse (which has been in place of decades) is determined to actually have an adverse environmental impact, AIMMCO will move it outside of the RHCA or install a pit toilet outside of the RHCA. Work on mining claims (this does not include transportation) would begin no earlier than one half hour before sunrise and end no later than one-half hour after sunset to reduce visual and noise impacts to wilderness users except in an usual situation such as finishing a nearly completed drill hole or repairing a piece of equipment. No artificial work lighting would be allowed on the claims with exception of headlamps, flashlights, lanterns, lighting necessary for underground work, vehicle headlights and lights necessary to conduct repair operations for the next day's activities.

Timing and Duration

Maximum of ten years after AIMMCO receives all requisite approvals to execute the 1996 Plan. The operating season will be from mid-June to mid-October with most work occurring between early July to middle of September.

Water

AIMMCO will obtain legal authorization to divert water for mining purposes (including the possibility of resuming existing rights) in accordance with Idaho law. There is an existing domestic water right associated with the bunkhouse, and a corresponding diversion from the creek that predates the wilderness and that was used after the FC-RONR wilderness was created. Accordingly, water use associated with the bunkhouse does not require a new water right (or Presidential authorization for a "new" diversion).

Noxious Weed Management

AIMMCO will use certified weed-free seeding and hay in all reclamation and mitigation work. Noxious weeds on the claims, if identified as occurring after operations begin, will be treated.

Fire Prevention

AIMMCO will outfit all equipment with internal combustion engines with spark arrestors where such devices are available. All vehicles will have fire extinguishers. AIMMCO will keep caches of hand-tools in vehicles. Slash and other flammable debris must be disposed of by burning, scattering or removing.

Monitoring

As determined by the Forest Service so long as it does not interfere with mining operations.

Reclamation and Bonding

AIMMCO will post a bond in a reasonable amount to cover reclamation costs. AIMMCO will remove mining equipment at the end of each operating season. Final reclamation, subject to future mining operations described in supplemental operating plans, will include recontouring all roads constructed by AIMMCO, collapsing adits unless the Forest Service desires to install bat gates, recontouring waste dumps if necessary to stabilize them, seeding all disturbed areas, and hauling out all equipment brought in to the site by AIMMCO. All buildings will be left standing.

Forest Plan Amendments

AIMMCO does not believe any amendments are necessary. To the extent any are, they are the same non-significant amendments identified for Alternative C on page 2-17.

III. Alternatives A, C And D in the DEIS Are Illegal and Cannot Be Selected As Preferred Alternatives.

NEPA is a purely a procedural statute that merely serves to inform the federal government of the environmental consequences of its actions. *Robertson v. Methow Valley Citizens Council*, 109 S. Ct. 1835 (1989). The statute is not substantive and cannot be used to justify actions or approvals that violate law. Thus, Alternatives A, C and D, each of which violate substantive law guiding the processing of mining operating plans, cannot be selected as the preferred alternative or form the basis of a ROD on the 1996 Plan.

A. Background

The processing of the 1996 Plan is the latest installment of a now 19-year-old campaign by the Payette National Forest ("PNF") to prevent mining at the Golden Hand claims. The following history establishes that PNF's proposed alternatives in the DEIS is merely a continuation of efforts to severely limit AIMMCO's mining activities and to materially interfere with AIMMCO's right to mine.

1980: Frank Church River of No Return Wilderness Area ("FC-RONR") is designated by Congress as wilderness area. The PNF approves AIMMCO's operating plan, including motorized access on the existing road from Pueblo Summit and mechanized mining equipment in the wilderness.

1981 – 83: PNF annually approves AIMMCO's operating plans, including motorized access on the existing road from Pueblo Summit and mechanized mining equipment in the wilderness. 15

March 1984: PNF refuses to process AIMMCO's operating plan, stating that the "Forest Service is required to conduct an examination of the claim to substantiate the basic facts of validity before approving mineral development activities." Letter from Weyers to Walker (March 8, 1984).

Summer 1984: Forest Service Mineral Examiner J.L. Curtis conducts investigation of claims.

August 1984: PNF issues a Report of Investigation by Curtis finding Golden Hand claims valid.

1985: Despite Curtis' report, Forest Service continues to refuse to process AIMMCO's operating plan. PNF has a different Mineral Examiner, Carol Thurmond, investigate the claims.

Feb 1986: PNF refuses to process AIMMCO's operating plan.

Nov 1986: Forest Service issues new report concluding that no Golden Hand claims are valid. The Department of Interior Administrative Law Judge characterizes the Forest Service action as follows: "It thus appears that that [Forest Service] labored mightily and over a prolonged period of time to negate its initial findings which had been favorable to the contestee." *U.S. v. American Independence Miners and Minerals*, I-23789 (January 19, 1989).

Feb 1987: Dept. of Interior, at request of Forest Service, initiates validity contest of AIMMCO's claims.

challenging AIMMCO's claims

- July 1987:** AIMMCO submits new operating plan to Forest Service called the "1987 Assessment Work Request" to access the claims using mechanized equipment to develop evidence to corroborate known, exposed mineral deposits and also to use hand labor to open the collapsed "Ella" portal.
- July 1987:** Forest Service denies the 1987 Assessment Work Request on grounds that it is "exploration." AIMMCO appealed this denial through to the federal district court where it was stayed pending appeals of the administrative process until 2000.
- Aug 1988:** Validity contest held. AIMMCO and Forest Service presented their cases to ALJ Ramon Child
- Jan 1989:** Judge Child finds Golden Hand claims 2, 3, 4 and 8 valid over contest by Forest Service. He finds claims 1 and 5 invalid. (AIMMCO withdrew claims 6 and 7 before the start of the contest)
- Feb 1992:** The Interior Board of Land Appeals ("IBLA") issues its decision on the appeals of both parties, finding claims 3 and 4 valid over the contest of the Forest Service, finding claim 2 invalid and remanding claim 8 for further findings. *United States v. American Independence Mines and Minerals*, 122 IBLA § 177 (1992).
- Oct 1995:** AIMMCO submits draft operating plan for claims 3 and 4 to PNF. AIMMCO consultant meets with PNF employees Jim Egnew and Fred Dauber on the claims to discuss plan.
- April 1996:** AIMMCO submits the 1996 Plan to the PNF
- Summer 1999:** Additional briefing submitted by Forest Service and AIMMCO on claim 8
- Sept 1999:** Forest Service withdraws its contest to claim 8
- Dec 1999:** AIMMCO files complaint in federal district court reactivating appeal of Forest Service denial of 1987 Assessment Work Request, appealing IBLA decision invalidating claims 1 and 2 and seeking to compel processing of 1996 Plan.
- Aug 2002:** District Court Judge Winmill issues his decision ruling in favor of AIMMCO on all counts. *American Independence Mines and Minerals v. U.S. Department of Agriculture*, CIV. NO. 00-291-S-BLW, Memorandum Decision 8/9/02 (Judge Winmill's Order). He made the following specific rulings:
- 1) That the Forest Service's denial of the 1987 Assessment Work request was "arbitrary and capricious" because it interfered with AIMMCO's constitutional right to conduct mining activity on its claims prior to a determination at hearing that the claims are invalid.
 - 2) That the Forest Service must recognize AIMMCO's right to conduct mining activity necessary to prepare for a validity contest on claims 1 and 2.
 - 3) That the IBLA was "arbitrary and capricious" in ruling that claims 1 and

2 were invalid when the Forest Service has unconstitutionally prohibited AIMMCO from doing the mining work necessary to prepare for the validity contest.

- 4) That the Forest Service has “withheld or unreasonably delayed” approval of the 1996 Plan, and processing must be complete on or before May 1, 2003.

Feb 2003 PNF issues DEIS with preferred Alternatives C and D that limit reasonably anticipated mining development activity based on a “Surface Use Analysis” that once again calls into the question the validity of claims 3 and 4.

15

The next installment in this history depends on the final EIS and the ROD issued by the Forest Service. If the Forest Service approves the 1996 Plan, but only if modified as described in Alternatives C or D, the next step in the history will be further litigation before Judge Winmill and quite likely a separate action in the federal court of claims.

B. Alternative A is not a viable alternative. It is merely a baseline.

As correctly noted by the Forest Service, NEPA regulation requires consideration of a no-action alternative. However, because 1) AIMMCO has a statutory right to mine, 2) Forest Service regulations require timely processing of operating plans, and 3) Judge Winmill has ordered processing of the 1996 Plan, the Forest Service does not have authority to take no action in these circumstances. Alternative A, the no-action alternative, therefore serves merely as a baseline.

16

C. Alternatives C and D impermissibly interfere with AIMMCO’s right to mine.

AIMMCO has stated that the purpose of the activities proposed in the 1996 Plan is to fully delineate the known ore body on claims 3 and 4. As required by regulation, AIMMCO has identified the full range of activities foreseeably necessary to accomplish this goal. These activities include a drilling array that extends out as far as AIMMCO believes it may need and the excavation of a maximum of 5 trenches if AIMMCO determines these are necessary to delineate the ore deposit.

17

Under Alternatives C and D, AIMMCO is permitted to do only a fraction of its proposed development activity. These limitations are not based on mitigating any specifically identified environmental impact to the surface resource. Instead, they are derived from a “Surface Use Analysis” by a Forest Service mineral examiner who, not surprisingly, calls into question the decision of the IBLA validating the claims and argues that AIMMCO should be allowed to do only a few development activities because he does not think there really is an ore deposit on the claims. This approach is illegal.

- 1. Forest Service regulations limit the authority of the Forest Service to modify the 1996 Plan only if necessary to minimize adverse environmental impacts on National Forest System surface resources.**

To address the legality of the DEIS's proposed alternatives, we begin by reviewing the scope of the Forest Service's regulatory authority, as defined in the Forest Service's own regulations, over approval of operating plans. The relevant regulations are codified in 36 C.F.R. § 228, Part A. They generally require that an operator file a plan of operations for any mining activity that will disturb surface resources in the National Forests. 36 C.F.R. § 228.4. After receiving a plan of operations, the Forest Service is required to act within 30 days although it can inform the operator that another 60 days is required or that an environmental review will be conducted. However, in the end, the Forest Service has only three options: 1) it can approve the plan, 2) notify the operator that a plan is not required, or 3) notify the operator of any changes in, or additions to, the plan of operations deemed necessary to meet the purposes of the regulations in this part [A]." 36 C.F.R. 228.5(b)(3) (emphasis added).

Consequently, the "Purposes" section of these regulations, 36 C.F.R. § 228.1, defines the scope of amendments the Forest Service can propose.

It is the purpose of these regulations to set forth rules and procedures through which use of the surface of National Forest System lands in connection with operations authorized by the United States mining laws (30 U.S.C. 21-54), which confer a statutory right to enter upon the public lands to search for minerals, shall be conducted so as to minimize adverse environmental impacts on National Forest System surface resources. It is not the purpose of these regulations to provide for the management of mineral resources; the responsibility for managing such resources is in the Secretary of the Interior.

Thus, it is clear that any proposed modification be designed to mitigate specifically identified adverse impacts to surface resources, not to micro-manage mineral development. These regulations do not allow the Forest Service to preclude mining activities because the Forest Service does not believe a valuable deposit exists.

- 2. The Forest Service may not regulate mining activities in such a way as to materially interfere with AIMMCO's mining operation.**

The Forest Service regulations discussed above are consistent with mining laws generally. Under the 1872 Mining Law, miners have a statutory right to go upon and use mining claims for the purposes of mineral development and production. It is well established in case law that exercise of this right may not be unreasonably restricted. This is confirmed in the Surface Resource Act of 1955, which specifies that the Forest Service does have authority "to manage and dispose of the vegetative surface resources . . . and to manage other surface resources" on mining claims in the National Forests. 30 U.S.C. §612.

However, this law is clear that the Forest Service cannot use its regulatory role to interfere with AIMMCO's right to mine:

Rights under any mining claim hereafter located under the mining laws of the United States shall be subject . . . to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject . . . to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: *Provided, however,* That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto.

19

30 U.S.C. § 612(b) (Emphasis added).

Thus, the Surface Resource Act, when balancing the conflicting aims of mining and surface resource protection, states that regulation is appropriate only if that the regulation does not interfere with the mining operations. “When it does, the Federal surface management activities must yield to mining as the ‘dominant and primary use,’ the mineral locator having the first and full right to use the surface and surface resources.” *Robert E. Shoemaker*, 110 IBLA 39, 53 (1989).

In further discussing the limits of the “endanger or materially interfere” standard, the IBLA concludes that the question is whether the agency’s regulatory activities “substantially hinder, impeded, or clash with appellants mining operations.” *Id.* at 54 (emphasis added). If they do, then the regulations must give way.

3. **Under Forest Service regulations, an operator is required to look as far forward as possible in describing its mining operation generally. The Forest is to approve the plan and then enforce environmental protection measures without meddling in the mining operation.**

The Forest Service regulatory authority also is limited in terms of the specifics of a mining plan it is permitted to dictate. For instance, in 28 C.F.R. § 228.4, an operator is required to set forth in a “map or sketch” the information in generally that is “sufficient to locate the proposed area of operations on the ground, existing and/or proposed roads” and the “approximate location and size of areas where surface resources will be disturbed.” 36 C.F.R. § 228.4(c)(2). Thus, it is not required that the operator give a detailed accounting to the Forest Service of the location of drill sites or its justification for choosing them.

20

Additionally, to the extent possible, an operator is to look as far forward as possible and describe the maximum amount of mining operations that are foreseeable. 36 C.F.R. § 228.4(c). This is an efficiency measure for both the operator and the Forest Service that provides for a single review of the operation at the outset rather than having costly and delaying piecemeal approvals as the operation proceeds. The only justifiable reason for not describing the entire operation at the outset is if a “development plan for the entire operation is not possible at the time of preparation of the plan.” In that case, the operator is required to prepare an “initial plan setting

21

forth his proposed operation to the degree reasonably foreseeable at that time.” 36 C.F.R. § 228.4(d). A supplemental plan is then required if additional activities are planned.

Once a plan of operations is approved, the Forest Service must go through a specific process to require amendments to the plan. 36 C.F.R. 228.4(e). The sequenced approval contemplated by the Forest Service is Alternatives C and D is not permitted by the regulations.

21

4. **The “Surface Use Analysis” employed by the Forest Service to justify Alternatives C and D materially interferes with AIMMCO’s right to mine.**

a) Introduction.

Alternatives C and D in the DEIS incorporate severe restrictions on AIMMCO’s proposed mining activities based not on science proving adverse impacts, but on a “Surface Use Analysis” (SUA) authored by Tom Abbay, who is a Forest Service mineral examiner. This document is “incorporated by reference” into the DEIS even though the Forest Service itself recognizes that, “Tom Abbay’s Surface Use Analysis . . . was not designed to serve a NEPA-related purpose.” Egnew email, Dec 12, 2002 (Appendix C). Indeed, the SUA was not commissioned to determine adverse surface impacts and appropriate mitigation under the 1996 Plan, but rather to put a pencil to the Forest Service’s consistent view that mining should not be allowed at the Golden Hand, regardless of the *de minimus* nature of the 1996 Plan’s environmental effects. Said differently, the SUA was commissioned to directly challenge the validity conclusions *United States v. American Independence Mines and Minerals*, 122 IBLA § 177 (1992).

22

The Forest Service bias against the mine is prevalent throughout the SUA. For example, it refers to the proposal to select drill sites on existing roads as a “random exploration plan” and “rank exploration.” SUA, p. 14. With regard to the IBLA, after five pages of criticizing the reserve analysis presented and adjudicated in the validity contest, he states, “the basis for the reserve figures and economic analysis accepted by the IBLA is clearly contradictory and the classification of reserves murky.” SUA, p. 23. Notwithstanding that the inclusion ore reserves estimates is not appropriate for an EIS, the Forest Service’s unsubstantiated challenge to the reserve analysis used in the validity contest are placed into context in Appendix B.

The SUA contains no analysis of the economic or environmental burdens it would impose. Nor does the DEIS.

23

The Surface Use Analysis has no place in the DEIS and should be stricken from the DEIS record. Alternatives C and D, which are based on the SUA, should be rejected.

24

b) The SUA inappropriately questions the validity of the claims.

The SUA on its face attacks the conclusions of Judge Child and the IBLA that claims 3 and 4 are valid claims.³ The SUA devotes an entire section—six pages—to criticizing the IBLA’s decision. Of course, not mentioned in these six pages is the fact that the Forest Service

25

³ It is clear that the PNF is looking for a way through the EIS process to get around what it believes was an erroneous decision by the IBLA. See email from CLEM POPE (May 31, 2002) (Appendix C).

itself was at the hearing, represented by its counsel, with the opportunity to present its case and cross-examine AIMMCO's witnesses. It is inappropriate for a Forest Service mineral examiner to now criticize the outcome of a final adjudication that the Forest Service lost, and then justify severe cutbacks in AIMMCO's proposed mineral development activities based on this criticism. This is especially true when AIMMCO defeated the Forest Service's contest even after the Forest Service illegally blocked AIMMCO's access to the claims to prepare for the validity contest. Winmill Order at p. 10. The impropriety of this scenario is apparent on its face. It is also illegal.

The IBLA's decision is final and unappealable and cannot now be questioned by the Forest Service in the context of processing a mining plan of operations. Judge Winmill's Order (in addition to general statutory and constitutional principles that protect the right to mine) specifically directs that AIMMCO is permitted to access even its claims that have not been adjudicated valid by Interior to conduct the development work needed to scope the extent of the ore deposit. Indeed, the Wilderness Act specifically recognizes a miner's "valid existing rights." Judge Winmill's ruling applies even more strongly to claims that have been adjudicated valid over the contest to the contrary by the Forest Service.

25

Indeed, Judge Winmill ruled that the Forest Service acted illegally by denying AIMMCO's constitutionally protected right to conduct mining activity on its claims prior to a determination in a hearing that the claims are valid. Judge Winmill Order at 10. If the recommendations of the SUA are adopted, the Forest Service will be taking its previous constitutional violation of presuming claim invalidity a step further by essentially ignoring the IBLA's decision declaring the claims valid. By this action they would continue to impede and block access to conduct reasonably defined operations necessary to fully delineate the ore body on validated claims.

- c) The sequenced approval called for under Alternatives C and D is really a mechanism for the Forest Service to deny the 1996 Plan based on a determination that the claims are invalid without a hearing.

The SUA tries to get around the IBLA's prior decision by stating that it is just "exercising caution" because the IBLA likely was wrong. SUA, p. 23. However, it is quite apparent that the Forest Service is setting up a denial of the 1996 Plan by conditioning the approval of all but a handful of drill sites on the results of the first test holes. Subsequent drill holes can continue only if the Forest Service itself is satisfied, after reviewing the results from the initial holes, that an economic deposit exists.⁴ But is there really any doubt that the PNF, left to make the decision itself, is going to conclude anything other than the results do not justify mining? The PNF's nearly twenty years of unwavering opposition to the Golden Hand mine indicates the outcome is predetermined—no matter what the test holes show, the Forest Service will argue that further mining is not justified. Of course, it will attempt to stop further operations only after it exacts tens of thousands of dollars of road improvements from AIMMCO on non-wilderness, public roads.

26

⁴The Forest Service effectively is attempting to make itself a non-capital contributing partner with AIMMCO in the Golden Hand venture with the majority vote on whether to go forward. The development work proposed in the 1996 Plan will only go forward if the Forest Service votes to approve it. Evidenced by past inaction and bias against mining, the outcome of this "vote" is predetermined.

It is not surprising that the framework proposed by the Forest Service in Alternatives C and D is not legally permissible. This proposal amounts to a new validity determination by the Forest Service without a hearing. But as noted above, the Forest Service is not authorized to make a validity determination without a hearing. Likewise, it is not permitted to deny mining activity on claims until they are determined invalid at a hearing. Additionally, the Forest Service regulations discussed above do not permit continuing, piecemeal approvals of an operating plan. 36 C.F.R. § 228.5.

27

Through reference in the SUA (p.25), the Forest Service apparently bases its authority to sequentially approve the 1996 Plan exclusively on the case of *U.S. v. Richardson*, 599 F.2d 290 (9th Cir. 1979). *Richardson* does not convey this authority. Instead, *Richardson* stands for the single proposition that under a particular set of facts, after an opportunity for a hearing, a court may determine that certain disproportionately destructive activities may be unwarranted in the exploratory phase of a mining operation. The case does not confer anything close to the absolute authority the Forest Service is asserting to determine whether a mining company actually should go ahead with the work it proposes on validated claims.

- d) The sequenced approval suggested by the SUA and incorporated into Alternatives C and D does not allow AIMMCO to meet its defined objective of delineating the already established ore deposit on the claims.

In addition to the legal infirmities discussed above, the limited, sequenced drill program suggested by Abbay does not come anywhere near fulfilling AIMMCO's goal of fully defining the ore deposit on the claims. This is directly contrary to the PNF-Land Resource Management Plan goal to "encourage and facilitate" mining activities. LRMP IV-99.

As Abbay notes, there currently is limited information about the claims. As explained above, this is because the Forest Service has illegally blocked access to the claims for all these years, preventing AIMMCO from collecting the very information Abbay now criticizes AIMMCO for not having. The irony of Mr. Abbay's criticism is startling.

28

Because information currently is limited, AIMMCO, as required by regulation, has proposed a broad development plan that will allow AIMMCO the flexibility to determine the outer reaches of the ore deposit. Abbay's close-in drill program attempts to capitalize on the lack of currently available information and to attempt to stop the development program before it ever has a chance to get off the ground.

The heart of Mr. Abbay's analysis is that the drilling sequence should move outward from a specific indicated-inferred reserve block to delineate the deposit. According to Mr. Abbay, AIMMCO would stop moving out when drill results indicate the deposit no longer extends that far. This proposed program is flawed.

For one, Abbay's approach of a close-in drilling sequence moving outward from a specific indicated-inferred reserve block to delineate a deposit is contradicted by his own earlier statement that is consistent with AIMMCO's plan:

29

[D]rill programs evolve from widely spaced exploration holes designed to test for the presence and grade of mineralization to more closely and regularly spaced hole patterns, often on a grid.

Abbay Report, p. 13.

Indeed, drill programs, like other logical studies, proceed from general to more specific. In the context of developing a mine, a prudent operator proceeds from widely spaced holes to more closely spaced holes to hone in the control boundaries of deposit.

Mr. Abbay suggests that only close-in drilling is warranted because the evidence presented at the validity hearing does not support the presence of mineralization outside of this area. However, the deposit dimensions presented in the validity hearing were bounded by two dikes that were chosen as reserve boundaries of the deposit. At least one of these dikes is post-mineralization and the other currently is ambiguous in terms of whether it is pre-mineralization or post-mineralization. A post-mineralization dike would certainly indicate the potential for the deposit to be in place on the other side of the dike. The lack of information concerning the dikes and the area on the other side of the dikes resulted in the selection of the dikes as the reserve boundaries for the purposes of the validity hearing. If either one or both dikes are post-mineral dikes, mineralization could extend an unknown distance beyond them. Drilling beyond the dikes is required to make this determination.

In addition, there is evidence of faulting on the claims, which could either be pre-mineral or post mineral faults. Understanding the implication of these possible faults at depth will identify further elements that will confirm and corroborate the dimensions of the deposit. Therefore, the drill pad locations outside the area of indicated/inferred reserves are logical extensions of fully delineating and corroborating the deposit by first determining its general outside boundaries and then moving to the specific. The location of the proposed drill hole sites will allow for the delineation of potential mineralization laterally and vertically with angle holes.

Abbay indicates several times that drill holes should be placed on a regularly spaced grid pattern in order to properly delineate the reserves. Abbay Report, p.13 – 14. However, AIMMCO's choice of drill site locations along existing roads and along proposed road extensions was designed to minimize surface impacts. AIMMCO determined that it could drill a number of holes at various azimuths and angles at each pad to generate a regular series of piercement points laterally and vertically through the mineralized structure. This allows for the number of piercement points to delineate the mineralized structure to be maximized relative to the minimum number of drill sites and roads in-order to minimize any potential surface disturbance. Use of a systematic grid pattern as Mr. Abbay proposes likely would create more surface disturbance due to the placement of drill sites regardless of terrain or surface conditions.

In addition, putting aside the potential surface impact, it is not clear that a grid drilling program would be appropriate until the mineralized structure is better understood through the drilling process. A steeply dipping mineralized structure is not the type of mineralization that lends itself to grid drilling. The currently proposed drill sites allow for the opportunity to drill both vertical and angle holes so the mineralized structure can be better understood. In the very

special case where the mineralization within the shear zone is determined to occur as a uniform, near-horizontal blanket shaped feature at shallow depths, a grid pattern may be justified.

31

Mr. Abbay is also incorrect in his conclusion that trenching will not be required in the development phase of the Golden Hand mine. In fact, trenching is used to delineate mineralization in areas covered with overburden to guide drilling. It is also used to collect bulk metallurgical samples to characterize oxidized mineralization for processing. Each of these activities takes place at different times in the development process. The DEIS itself recognizes this: "Trenches can provide fresh exposures where vegetation of colluvium obscures lithology or geologic contacts. They can provide access to ore sampling if they can be located accurately." DEIS, p. 3-14.

32

In summary, the 1996 Plan does not purport to prejudge exactly how the development plan will proceed. Such plans necessarily must be flexible to respond to evolving information as information is developed. The 1996 Plan gives AIMMCO-the entity that will actually expend the funds to develop the property-the flexibility to drill test holes in the locations that make the most sense as information is developed in the claims. This will result in a sequence of drill holes where the drill pattern will move from the general to the more specific. Mr. Abbay is simply incorrect in his conclusion that prudence dictates only an inward-out drill pattern on the claims with no trenching.

33

- e) Conclusion – If adopted, Alternatives C or D would materially interfere with AIMMCO's right to mine.

Alternative C and D in the DEIS rely on the SUA to deny most of AIMMCO's mining activities. These alternatives also sanction a program where development could proceed only if the Forest Service agrees that it is prudent to do so. The legal and factual deficiencies described in this section make it clear that these restrictions would materially interfere with AIMMCO's right to develop its validated mining claims. Alternatives C or D therefore cannot be selected as the proposed alternative.

34

D. Alternatives C and D propose road mitigation measures that are not rationally related to minimizing any adverse environmental effects associated with the 1996 Plan on roads over which the Forest Service does not have jurisdiction.

The legal problems with Alternatives C and D are not limited to mining activities in the wilderness. Significant problems also exist with access issues on public roads outside of the Wilderness. Specifically, in Alternatives C and D, the Forest Service proposes road remediation work on FRs 371 and 373 that is not legally justified.⁵

35

⁵ The analysis in this section applies also the requirement that AIMMCO convert over 2.5 miles of existing road into a trail and that AIMMCO complete the 1996 Plan in 3 to 5 years.

1. **Under Forest Service regulation, AIMMCO's use of public for mining access is beyond the scope of issues the Forest Service can consider in approving a plan of operations**

By considering the conditions of the roads outside of the wilderness the DEIS is analyzing an illegal requirement. Forest Service regulations provide that a plan of operation need not analyze roads "which will be limited to the use of vehicles on existing public roads as roads used and maintained for National Forest purposes" 36 CFR § 228.4 (a)(1)(i). The out of wilderness roads are public roads and are not subject to the plan of operations.

35

2. **All of the roads that AIMMCO will use are public roads under jurisdiction of Valley and Idaho Counties.**

Forest Roads 371 and 373, and the road from Pueblo Summit to the Golden Hand are claimed as county roads by Valley and Idaho County. The counties assert jurisdiction to maintain the roads and have them open for public use. It therefore appears that the Forest Service does not have jurisdiction to mandate maintenance activities on the roads at issue.

36

3. **Under Alternatives C and D, the Forest Service is requiring expensive road improvement projects that have no rational connection to AIMMCO's activities.**

- a) Introduction

Aside from the jurisdictional question, the currently proposed road improvement projects on FR 371 and 373 under Alternatives C and D are arbitrary and capricious because they impose costly remediation measures on public roads that are not shown to relate in any way to mitigating an adverse environmental impact resulting from activities under the 1996 Plan. Indeed, it appears from the record as though the Forest Service added the road improvement requirements (DEIS, p. 2-12) based only on the wish list of beneficial road improvements identified by a Forest Service engineer identified during a field trip. There is nothing in the DEIS or the Project Record that relates the proposed improvements to impacts from AIMMCO's activities.

Additionally, it appears from the record that the conclusion that AIMMCO would be responsible for 1.2 tons of sediment is not genuine. Instead, it appears that the Forest Service deliberately manipulated its model to remove the remediation measures proposed by AIMMCO and to mischaracterize the 1996 plan as widening the roads by as much as 2 feet—a proposal never made by AIMMCO—tom come up with the 1.2 ton increase. When AIMMCO's road improvements are factored in, and the road is not widened, it appears that AIMMCO's proposal would significantly reduce current sediment transport to Smith Creek! *See* Section IV.C.2 for additional discussion.

37

Even ignoring the fact that AIMMCO will not contribute an additional 1.2 tons of sediment to the Smith Creek drainage, the Forest Service has not identified any adverse environmental impact from this additional sediment. As we discuss in detail in Section IV.C.2, the 210+ tons of anthropogenic sediment in Smith Creek is not significantly increased by the addition of 1.2 tons—particularly in a stream that is properly functioning and meeting all beneficial uses.

But even if the 1.2 tons were having an adverse impact, the appropriate regulatory response would be a mitigation measure that reduced sedimentation by something close to 1.2 tons. In this case, the Forest Service would impose mitigation measures that reduce sedimentation by 16.9 tons—or remediation for 14 times more impact than is identified! Such disproportionate regulation is a taking.

- b) The Forest Service through regulation seeks to have AIMMCO bear a burden created by the public that must be born by the public.

“The Fifth Amendment’s guarantee...was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960). The proposed mitigation of installing culverts, bridges, and high-tech fords to reduce sediment loading not created by AIMMCO is a burden that should be borne by the public as a whole, not by AIMMCO. Forcing this burden on AIMMCO amounts to a regulatory taking in violation of the Takings Clause of the Fifth Amendment to the United States Constitution. The Forest Service cannot force AIMMCO to choose between: 1) complying with its unreasonable, unrelated and disproportionate mitigation requirements and being allowed to mine its claim; or 2) dropping its proposal to mine the Golden Hand claims. That is the unconstitutional choice being offered under Alternatives C and D.

- c) Regulation that goes too far is a taking.

“The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). In *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the United States Supreme Court and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), provided additional guidance in the area of Fifth Amendment takings in cases where the governmental entity conditions its approval on an applicant’s willingness to comply with specific governmental demands or requirements.

“Read together, *Nollan* and *Dolan* establish a three-part test. First the court asks whether government imposition of the exaction would constitute a taking. Second is the ‘essential nexus’ test, which asks whether the government has a legitimate purpose in demanding the exaction. Third is the ‘rough proportionality’ test, which asks whether the exaction demanded is roughly proportional to the government’s legitimate interests.” *Garneau v. City of Seattle*, 147 F.3d 802, 809 (9th Cir.1998).

“The first inquiry ignores the government’s land use power, and asks only whether government imposition of the exaction would be a taking. The exaction is the concession sought by the government, or the condition upon which granting the permit depends.” *Garneau*, 147 F.3d at 809. If the Forest Service were to simply require AIMMCO to individually bear the cost of culverts, a bridge and significant mitigation of sediment loading on the Smith Creek roads, rather than conditioning approval of AIMMCO’s mining operations on AIMMCO agreeing to comply with these demands, there is no doubt a taking would exist. See *Nollan*, 483 U.S. at 831; *Dolan*, 512 U.S. at 384.

The second and third parts of the *Nollan/Dolan* three-part test “seek to determine whether the government may shield itself from a takings claim through the use of its police powers.” *Garneau*, 147 F.3d at 810. The “essential nexus” test compares the government’s purpose is seeking the concessions with its legitimate land use interests. If there is no connection, then the government’s demands are not a legitimate exercise of police power, but rather are an “out-and-out plan of extortion.” *Garneau*, 147 F.3d at 810 (quoting *Nollan*, 483 U.S. at 837).

In *Nollan*, the United States Supreme Court explained that the exactions must be related to the burdens resulting from the development project. *Nollan*, 483 U.S. at 838. In *Dolan*, the Court explained that relation between exaction and burden is determined with the “rough proportionality” test. While “no precise mathematical calculation is required,” the Forest Service “must make some sort of individualized determination that the required [exactions are] related both in nature and extent to the impact of the proposed development.” *Dolan*, 512 U.S. at 391. (emphasis added). “The rough proportionality test ensures that the ‘price’ of the government permit is not significantly higher than the social harm caused by the proposed development.” *Garneau v. City of Seattle*, 147 F.3d 802, 810 (9th Cir. 1998). Alternatives C and D fail this test.

37

The Forest Service seeks to exact from AIMMCO mitigation of 16.9 tons of sediment, 15.7 tons of which is completely unrelated to AIMMCO’s proposed mining operations (even assuming AIMMCO is responsible for 1.2, which it is not). This is entirely disproportionate, and therefore, unconstitutional under *Dolan*. If the Forest Service is truly concerned with keeping this 15.7 tons of sediment out of Smith Creek each year, than it must use public funds to do so; the Forest Service cannot force AIMMCO to bear this public burden unrelated to AIMMCO’s mining operations as a condition of approval. This is an unconstitutional taking.

E. Alternative C arbitrarily precludes occupancy at the mine site.

1. Introduction

Occupancy of the bunkhouse on Claim #2 by AIMMCO personnel during operations curiously has become a contentious issue for the Forest Service. The Project Record is clear that the Forest Service spent time debating whether it would allow onsite occupancy, simply decided that it would not and then manufactured reasons in an attempt to support this decision. The result, reflected in the currently selected preferred Alternative C, is a transparent decision to increase inefficiency and costs for AIMMCO that is arbitrary and capricious.

38

The 1996 Plan proposes to house the work crew in the existing bunkhouse, which will be repaired as follows: general cleaning, replacement of broken windows, repair of cook stove and the enhancement of the foundation in order to secure the bunkhouse’s longer term viability. This is described accurately in the DEIS in Alternative B. Under Alternative C, the crew could not stay at the bunkhouse (or any other previously disturbed location on the mine site. Instead, the crew would reside outside of the wilderness and national forest system lands and would make what the Forest Service describes as a “reasonable” one and one half hour commute to the

Golden Hand Mine. DEIS, p 2-15. Alternative D would allow AIMMCO to house the crew in an “outfitter type” camp with tents and non-permanent structures on a Forest Service-selected site.⁶

It is entirely unclear from the DEIS or the Project Record why the Forest Service is opposed to the use of the bunkhouse. Indeed, no rational reason is given for why the bunkhouse should not be used. If the Forest Service actually were concerned about minimizing adverse impacts to surface resources, particularly in the wilderness, it would seem that the Forest Service would welcome the idea to house the crew onsite in structure that already has made its imprint on the wilderness. It appears as though the Forest Service simply will deny onsite occupancy simply as a way to inconvenience AIMMCO and thereby increase costs.

2. Use of the existing bunkhouse will enhance the wilderness values over all other alternatives.

The Forest Service attempts to justify the denial of using the bunkhouse on grounds that it would affect the “untrammeled” condition of the wilderness: “Occupancy of the bunkhouse and use and maintenance of additional permanent structures would adversely affect the natural integrity and untrammeled conditions, as it is demonstrative of an environment influenced and controlled by man.” DEIS, p. 3-61. The DEIS goes on to quote the Wilderness Act of 1964 for the proposition that man is but a visitor in these areas.

Aside from the fact that the Wilderness Act contains a specific exception for mining and reasonably incident activities, (discussed in more detail below), the quoted justification defies the on-the-ground reality. The Golden Hand mine is a historic, disturbed mine site with all man-influenced surface impacts associated with a mine—waste dumps, roads, buildings, etc. This is not an untrammeled area. It should not have been included in the wilderness area, but that aside, it is utterly disingenuous for the Forest Service to approach the 1996 Plan as if it is proposing activities in a pristine area untouched or “untrammeled” by man. The EIS needs to be grounded in the reality that the 1996 Plan proposes activities at an existing mine site.

The DEIS goes on to justify offsite occupancy over the use of the bunkhouse because it “would lessen the impacts in regards to human habitation. Human habitation represents an environment controlled and influenced by humans.” DEIS, p. 3-64. The text continues, “[t]he lack of evidence of human habitation in the wilderness would benefit the visitor’s solitude and sense of remoteness.” DEIS, p. 3-65. Here, the DEIS has fallen into subjective, unsubstantiated, results-oriented justifications of the predetermined result to deny occupancy. The basic argument in the DIES is this: Humans should not occupy the man-made, existing bunkhouse because this may offend other humans who have come to the mine site, probably via the existing road from Pueblo Summit, seeking a sense of remoteness and solitude from the untrammeled condition of the wilderness. This does not make sense.

Any visitor looking for “solitude and a sense of remoteness” is not going to find it at the Golden Hand mine site. There is an existing road down from the wilderness boundary to an existing mine site with existing buildings. New mining activities will be occurring on the site. Is the solitude and sense of remoteness of visitors in this part of the wilderness may be feeling

⁶ In any event, the Forest Service should consider onsite occupancy in temporary structures if it insists that it does not want the bunkhouse rehabilitated.

going to be hindered by these miners, who have been doing mining work all day, spending the night in an existing bunkhouse? On the contrary, by any rational account, having these miners get in their vehicles each day to drive out of the wilderness, only to return by vehicle in the morning, would impair the sense of remoteness.

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3. The Forest Service has the legal authority to approve occupancy under an operating plan.

The Forest Service continues its struggle to justify daily commutes over onsite occupancy with the unbelievable and completely unsupported conclusion that it cannot legally authorize use of the bunkhouse because “occupancy cannot be considered except on claims with valid existing rights.” DEIS 3-17. The Forest Service reasons that since only claims 3, 4 and 8 are established as valid claims, the Forest Service can only approve activities on these three claims. And since the bunkhouse is on claim 2, its use cannot be approved.

First, the Forest Service is incorrect when concluding that it can only approve activities associated with mining a claim that are actually on that mining claim. The Wilderness Act is to the contrary:

Nothing in this Act shall prevent within national forest wilderness areas any activity, including prospecting, for the purpose of gathering information about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment.

39

Wilderness Act of 1964, § 4(d)(2). (emphasis added). Further, in describing the right of use of land in the wilderness incident to mining, the Act specifically identifies “facilities necessary in exploring, drilling, producing, mining and processing operations” as permitted uses. Wilderness Act § 4(d)(3). Moreover, the Forest Service is aware of the long line of authority allowing it to approve off-claim activity in an operating plan. *See* Tom Buchta email (February 19, 2002) (Appendix C).

Second, the Forest Service neglects recent history when concluding that it can presume that claim 2 is invalid and deny mining related activities on the claim on that basis. Has the PNF learned nothing from Judge Winmill’s Order? The IBLA order holding the claim invalid has been reversed. Thus, the claim 2 is presumed valid.

4. Occupancy at the bunkhouse is the only alternative that preserves the structure and that is compliant with the Central Idaho Wilderness Act.

The Forest Service recognizes that protection of existing structures is legally mandated in the FC-RONR Wilderness Area:

“The FC-RONR Wilderness Plan (USDA 1985, as amended, page 98) directs that the cultural history of the area be recognized as a component of the wilderness resource . . . The Wilderness Plan also contains direction mandated by the [Central Idaho Wilderness Act] to protect culturally

40

significant properties against destruction from natural deterioration (p. 108). Protection includes the restoration, stabilization, and maintenance of historic structures.

DEIS. p. 3-156 (emphasis added). This statement recognizes the mandate in the Central Idaho Wilderness Act ("CIWA") that historic structures are to be preserved. 94 Stat. 948 § 8(a)(1). The Forest Service currently is violating this law: "Under the No Action alternative, the existing cultural resource properties at the Golden Hand mine site would continue to be allowed to decay. Currently, the Forest Service has no plans to restore, stabilize, or maintain the properties at the Golden Hand Mine to meet cultural resource protection standards." DEIS. p. 3-160 (emphasis added).

AIMMCO's proposal is the only one considered in the DEIS that does not violate the law because it is the only one that will conduct restoration, stabilization and maintenance work on the bunkhouse. See DEIS, p. 3-160. However, the DEIS arbitrarily turns a blind eye to this and concludes that the 1996 Plan will "adversely affect the historic buildings, particularly because the maintenance is not designed to comply with standards specified in the 'Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Structures.'" DEIS, p. 160.⁷ The DEIS has descended into the absurd. Despite proposing considerable work that would bring the Forest Service into compliance with the CIWA, the DEIS concludes AIMMCO's proposal will actually harm the cultural resources on the claims because it apparently has not proposed work in accordance with non-mandatory (and irrelevant) Department of Interior Guidelines (of course, we do not know whether this is true or not because no explanation is given as for why the guidelines are not met). That this is possibly a justification for offsite housing of the crew is unreservedly arbitrary.

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Incredibly, the DIES goes further and concludes that Alternatives C and D would actually be better than B even though they too will allow degradation of historic structures in violation of law. Why will C and D be better? Because the presence of work crews occupying the structures increases the possibility of "damage or removal of historic artifacts." What artifacts? This purely speculative, unsubstantiated statement is the justification for concluding that Alternatives B is worse for cultural resources than alternatives that will permit deterioration of a historic structure in violation of law that would be preserved under Alternative B. It is difficult to imagine a more biased, result-oriented conclusion.

5. According to the Forest Service, the fact that people in other occupations suffer the inconvenience of long commutes justifies inflicting the same inconvenience on AIMMCO.

Even though it fails to give any justifiable reason for why onsite occupancy should not be allowed, the Forest Service next takes great pains to justify why the long commute is reasonable. The reasons for justifying offsite access are as unpersuasive as those justifying denial of occupancy.

41

⁷ The Forest Service Plan (USDA 1988, as amended) apparently requires that "All reconstruction, remodeling, and maintenance of historic government owned buildings shall be done to the standards specified in the 'Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings' (p. IV-116)." DEIS 3-156. If so, this clearly is an opportunity to make a minor, non-significant amendment to the Plan.

Armed only with subjective sentiments, and not supported conclusions, the Forest Service concludes that AIMMCO's "belief that occupancy 'greatly improves the efficiency of our operation' and 'that use of the bunkhouse is important for our intended operations in order to keep our crews relatively comfortable, well fed, and working onsite' (Ivy. 2002) is insufficient to warrant occupancy." The stated reasons: "it would be a convenience not a necessity and others working in the back country in timber or other endeavors plan, live, and work with the uncertainties inherent in such work during a short field season." SUA, p. 11.

But of what relevance to this proposal is the fact that other people in other professions having to make long backcountry commutes? The analysis should be focusing on this proposal. What are the pros and cons to onsite versus offsite occupancy from the perspective of efficiency of operations (including safety) and resources concerns? Both point towards onsite occupancy. It is less disturbing to the environment and wilderness values—no new disturbance is caused by sleeping in an existing structure. It minimizes traffic in the wilderness—offsite occupancy guarantees at least two vehicle roundtrip per day. Onsite occupancy dramatically increases AIMMCO's efficiency (and thus reducing costs)—the total one way commute time would be 1 1/2 to 1 3/4 hours. Total commuting time per day would be 3 to 3 1/2 hours.⁸ To place the commute into context, drillers and miners essentially work 8-hour days. Three-hour commutes would reduce actual work time to 4 1/2 to 5 hours per day, or by 37.5% to 43.75%.

The Forest Service's insistence that AIMMCO require its workers commute to the mine site each day for no justifiable reason—and when the facts actually suggest that onsite occupancy reduces surface impacts—reveals that the DEIS and the Forest Service processing of the 1996 Plan in general is aimed at preventing mining, not minimizing surface impacts. A conclusion to require offsite occupancy is arbitrary, and thus illegal.

The final EIS and the ROD therefore should recognize the weight of the facts and allow onsite occupancy at the rehabilitated bunkhouse.

IV. Alternatives B and B1 are complaint with all environmental indicators.

A. Introduction

The fatal legal flaws of Alternatives A, C and D remove them from consideration in the FEIS and the ROD. That leaves only Alternatives B and B1 as possible for consideration. Fortunately, in addition to meeting legal requirements, both alternatives also comply with all the environmental indicators the Forest Service uses in the DEIS to assess adverse surface impacts. This is demonstrated in summary fashion in the following Modified Table S-2, modeled after Table S-2 in the DEIS, p. S-10 to 11. Like Table S-2 in the DEIS, our Modified Table S-2 lists ten significant "issues" with a subset of "indicators." Our Table also adds the new issue of "Legal Compliance."

⁸ Forest Service personnel estimate that the drive from Big Creek to Pueblo Summit is "just over an hour" IDT Meeting Notes, December 17, 2002. From the fee lands on Logan Creek to Big Creek the drive would be about 15 minutes. From Big Creek to Pueblo Summit up the Smith Creek Road, the drive would be a little over an hour. From Pueblo Summit into the Golden Hand Mine, the drive time would be around 15 minutes.

Our Modified Table S-2 analyzes the alternatives by removing the bias in the DIES against Alternative B, removing subjective judgments like “better” or “worse” and simply assess compliance with indicators by assigning plus (+), minus (-) or neutral (0) to each indicator for each alternative. The result is that Alternatives B and B1 are the most compliant, even if legal compliance is not considered.

B. Modified Table S-2 - Comparison of Alternatives by Effect to Significant Issues for the Golden Hand Mine Project.

MODIFIED TABLE S-2

INDICATORS	ALT A “no action”	ALT B Golden Hand Proposal	ALT B1 – Proposal w/ Mitigation	ALT C – DEIS Preferred	ALT D
<i>New Issue - Legal Compliance</i>					
Complies with Judge Winmill’s Order	No -	Yes +	Yes +	No -	No -
Recognizes validity of claim	No -	Yes +	Yes +	No -	No -
Materially interferes with mining	Yes -	No +	No +	Yes -	Yes -
Imposes mitigation measures that are related to 1996 Plan activities	No -	Yes +	Yes +	No -	No -
Arbitrarily denies occupancy.	Yes -	No +	Yes +	No -	No/Yes 0
<i>Issue #1 – Mineral development</i>					
Geology information obtained	Non-compliance w/ valid existing rights -	Yes – complies w/ forest plan +	Yes – complies w/ forest plan +	Non-compliant, materially interferes with geologic objectives -	Non-compliant, materially interferes with geologic objectives -
Reasonably incident activities (per surface use analysis)	No – non-compliant -	Yes – compliant +	Yes – compliant +	No – non-compliant -	No – non-compliant -
Comply with PACFISH mineral direction items	Not relevant, not compliant -	Complies with 5 out of 5 +	Complies with 5 out of 5 +	Complies with 5 out of 5 +	Complies with 5 out of 5 +
<i>Issue #2 - Roads and access management</i>					
Changes in miles of roads	No change compliant +	0.5 – 0.6 temporary (compliant) +	0.5 – 0.6 temporary (compliant) +	0.5 – 0.6 temporary (compliant) +	No change, compliant +

INDICATORS	ALT A "no action"	ALT B Golden Hand Proposal	ALT B1 – Proposal w/ Mitigation	ALT C – DEIS Preferred	ALT D
Condition of roads outside Wilderness	No Change +	Improvement +	Improvement +	Improvements not related to impacts from Plan +	Improvements not related to impacts from Plan +
Condition of roads and trails in Wilderness	No Change Non-compliant No Access -	Minor Change (reasonable access) +	Minor Change (reasonable access) +	Non-Compliant, unreasonable, unsafe access -	Non-Compliant, unreasonable unsafe access -
Issue #3 – Wilderness character					
Effects on natural integrity	Maintained, current impacts +	Minor impact +	Minor impact +	High, minor impact +	Moderate, very minor impact +
Effects to untrammed condition	Allows deterioration of historic bldg -	Low, protects historic bldg, houses crew in previously impacted areas +	Low, protects historic bldg, houses crew in previously impacted areas +	Highest, allows deterioration of historic bldg and maximizes vehicle trips -	High, allows deterioration of historic bldg, creates new camp in undisturbed area -
Issue 4- Wilderness Experience					
Effects to solitude and sense of remoteness	Maintained +	Very minor impact, limits vehicle trips +	Very minor impact, limits vehicle trips +	Minor impact, maximizes vehicle trips -	Very minor +
Effects to primitive recreation	Maintained +	Very minor impact +	Very minor impact +	Minor impact, maximizes vehicle trips -	Very minor impact +
Issue 5- Water Quality					
Est. sediment delivery on FR 371 and 373 (tons/yr) Outside Wilderness	18.4, no identified adverse envtl impact +	Less than 18.4, no identified adverse envtl impact +	Less than 18.4, no identified adverse envtl impact +	1.5 to 10, does not mitigate any identified adverse envtl impact +	1.5 to 10, does not mitigate any identified adverse envtl impact +
Est. sediment delivery in Wilderness (tons/yr)	.0075, no identified adverse envtl impact +	5.1, no identified adverse envtl impact +	No measurable increase, no identified adverse envtl impact +	1.0, no identified adverse envtl impact +	.0075, no identified adverse envtl impact +
Risk of metal contamination	No change +	Low risk, with or without monitoring +	Low risk, with monitoring +	Low risk, with monitoring +	Lower risk, with or without monitoring +
Issue 6 – Riparian areas and wetlands					

INDICATORS	ALT A "no action"	ALT B Golden Hand Proposal	ALT B1 - Proposal w/ Mitigation	ALT C - DEIS Preferred	ALT D
Riparian areas and wetlands affected (non-risk and non-critical habitat areas)	None +	None – 0.11 acres in & out of Wilderness, .06 in Wilderness +	None – .06 in Wilderness +	None – 0.06 acres +	None +
Issue 7 – Fish populations and habitat of concern					
Large Woody Debris (LWD)	No change +	Maintain +	Maintain +	Maintain +	Maintain +
Sediment	No change +	Improve outside wilderness, degrade in Wilderness, no adverse envtl impact +	Improve outside wilderness, degrade in Wilderness, no adverse envtl impact +	Improve outside wilderness, degrade in Wilderness, no adverse envtl impact +	Improve outside wilderness, degrade in Wilderness, no adverse envtl impact +
Flow	No change +	Maintain, minor degrade, no adverse envtl impact +	Maintain, minor degrade, no adverse envtl impact +	Maintain, minor degrade, no adverse envtl impact +	Maintain, minor degrade, no adverse envtl impact +
Risk of chemical contamination	No change +	Low risk +	Low risk +	Low risk +	Very low risk +
Road density and location	No change +	Minor increase +	Minor increase +	Minor increase +	No Change +
Issue 8 – Wildlife populations and habitat					
Amount of habitat modified for species of concern	None +	Minimal +	Minimal +	Minimal +	Minimal +
Effects of human activity on wildlife populations	No change +	Minor, non-significant displacement for up to 10 years +	Minor, non-significant displacement for up to 10 years +	Minor, non-significant displacement for up to 5 years +	Minor, non-significant displacement for up to 5 years +
Issue 9 – Noxious weed establishment and spread					
Establishment and spread of noxious weeds	No change, may impact -	No impact +	No impact +	No impact +	Possible impact -
Issue 10 – Cultural resources and tribal trust responsibilities					
Compliance NHPA & ARPA	Not compliant, adverse effects -	Compliant, minor adverse effects, restores historic building +	Compliant, minor adverse effects. Restores historic building +	Not complaint, adverse effects to historic structures -	Not compliant; adverse effects to historic structures -
Tribal trust responsibilities	No effect 0	No effect 0	No effect 0	No effect 0	No effect 0

Even when removing legal compliance, Alternatives B and B1 are the most compliant with the identified indicators. This is demonstrated in the following table:

Summary of Modified Table S-2 Including Legal Requirements

	Alternative A	Alternative B	Alternative B1	Alternative C	Alternative D
Meets Indicator	16	23	23	16	17
Violates Indicator	7	0	0	7	6
Neutral	1	1	1	1	1

42

- C. Alternatives B or B1 satisfy all Forest Service environmental indicators. Alternatives A, C and D do not.

New Issue - Legal Compliance

The legal issues, and specifically the fatal non-compliance with legal requirement by Alternatives A, C and D is discussed in detail in Section III of these comments. Only Alternatives B and B1 are legally permissible alternatives that can form basis for the ROD on the 1996 Plan. A review of the ten Forest Service issues and indicators follows.

1. Issue #1 – Mineral Development

- a) Only Alternatives B and B1 Allow AIMMCO to obtain necessary geologic information.

Alternatives B and B1 will provide the quality and quantity of information needed to fully delineate the ore body on the claims, which is the stated goal of the 1996 Plan. In contrast, Alternatives A, C or D fail to provide the quality and quantity of information needed to fully delineate the ore body on the claims. Alternative A obviously is non-compliant because it allows no mining at all. Alternatives C and D, while purporting to allow a limited number of drill holes and more if the Forest Service thinks that additional work is worthwhile, is destined to deny AIMMCO the right to obtain the geologic information it seeks. See Section III.C.4 discussing the problems with the “sequenced” approach advocated in Alternatives C and D.

43

Also, neither C nor D allows for trenching activity that may be necessary in defining geology. These Alternatives are further problematic in that they would require a manually portable drill rig. This would be cost-prohibitive. As noted in the Kluane International Drilling information on drill rigs in the Project Record, the proposed drill would require 6 to 10 workers just to move. This may be economic in less developed countries where labor is cheap, but not here.

Only Alternatives B and B1 comply with the indicator questioning whether AIMMCO will be able to obtain the geologic information it needs.

- b) Only Alternatives B and B1 allow activities reasonably incident to mining.

The mineral development section of DEIS that incorporates the SUA. Using the SUA as its guide, the DEIS purports to conclude that most of AIMMCO’s proposed mineral activities are “not reasonably incident to mining” because the SUA’s author questions the existence and viability of the proven mineral deposit on the claims. The problems with this analysis, and its

44

incorporation into the DEIS are discussed in Section III.C. In summary, the Forest Service is without authority in these circumstances to unilaterally determine that AIMMCO's mining activity is not warranted based on the determination by Mr. Abbey that the claims are not really valid.

44

What is relevant in terms of "reasonably incident" is the question of occupancy. Only Alternatives B and B1 are compliant in this regard since they allow onsite occupancy. Alternative D allows occupancy, but because it limits actual mining activity, it also is non-compliant.

45

c) All the alternatives except Alternative A comply with PACFISH.

The DEIS identifies compliance with the Minerals Management Objective of the PACFISH document as another resource indicator for mineral development. The DEIS states that Alternative B is non-compliant with four out of the five the PACFISH indicators for mineral management. By contrast, the DEIS states that Alternative C is non-compliant in only one instance and that A and D fully comply. DEIS, p. 3-5 to 3-6. The DEIS is in error.

46

Actually, all the alternatives except for Alternative A comply with the PACFISH indicators. Because of its *de minimus* impacts, Alternative B avoids or minimizes impacts of mining (MM-1) and locates structures, support and road facilities outside stream buffers. Where no alternative siting facilities are available, which there are not in this case, the requirements of MM-2 are met. Similarly MM-3 (waste), MM-4 (sand and gravel) and MM-6 (inspection and monitoring) are all easily complied with. Alternative A is not relevant and non-compliant. Alternatives B, B1, C and D are all compliant.

2. Issue #2. Roads and Access Management

a) When existing roads are treated as "roads" instead of "trails" the amount of proposed road construction is about half of a mile.

The issue of roads in these comments is adjusted to remove the persistent and obvious bias in the DEIS indicating that AIMMCO will be "constructing" or "reconstructing" roads on "trails" in the wilderness. The reality is that the "trail" from Pueblo Summit is a road, as are the existing "trails" on the claims. And the Forest Service knows this. The DEIS adds a technical justification at some point for why the Forest Service uses this terminology, but the EIS needs to deal with reality, not technicalities.

47

The EIS needs to be honest about this reality and adjust its terminology. The roads at issue were in use as recently as 1983, well after the Frank Church became a wilderness area, until the time the Forest Service determined to block all access to the Golden Hand Claims. The purpose of the EIS is to inform the decision maker and the public about environmental impacts. Calling existing roads "trails" and thereby accounting to AIMMCO in the DEIS many miles of road construction is deceiving. This needs to be changed in the final EIS.

When this bias is corrected and road are called roads, the maximum amount of proposed road construction on the claims, which are all logical extensions of existing roads, is 0.5 miles to

0.6 miles (depending on which Forest Service number you use). This is a *de minimus* amount of new road construction on an already disturbed site.

47

b) The 1996 Plan never proposed widening the existing roads.

The discussion of the environmental effects of the road and access management issues wastes considerable time analyzing the effects of road widening projects AIMMCO has never proposed.⁹ All this hand wringing in the DEIS about the increased sedimentation and the destruction of 170 trees because AIMMCO actually intends to widen roads to twelve feet is dishonest and needs to be removed in the EIS.

48

What it comes down to is this: AIMMCO is not going to widen the roads beyond existing roadbed widths.¹⁰ It will use vehicles that can operate safely on those roads. That is all the Forest Service needs to know to complete its analysis. An operator is not required to designate specific vehicles types in an operating plan, and it is not for the Forest to dictate the specifics of vehicles AIMMCO or any other operator will use.¹¹

c) Alternatives B and B1 comply with all Road and Access Management Indicators

The DEIS issue of roads and access management purports to determine the effects of the proposed activities on the existing roads, and presumably the new roads as well. DEIS 3-31. The indicator is identified as changes to roads. Using these criteria, it is clear that Alternatives B and B1 are compliant.

49

AIMMCO proposes to use existing roads to access its mine site and to conduct most of the development work on the site. Some switchbacks may be widened if determined necessary. Extensions of existing roads totaling about one-half mile will occur if determined necessary to establish drill sites and collect information on the geology and mineralization of the zone. In maintaining the roads and constructing the new ones, AIMMCO will comply with Idaho law and therefore use BMPs. In removing slough and in widening switchbacks, AIMMCO may use reasonable sidecasting where there are no sedimentation issues—for instance, there are no

⁹ At the insistence of the Forest Service, AIMMCO identified a list of vehicles it might use with the stated caveat that this is subject to change as needs dictates and on-the-ground decisions are made. It is outrageous that the Forest Service is attempting to take this list, which it forced out of AIMMCO even though it is not required, and then use it to suggest that AIMMCO has concealed its true intent to widen roads. Moreover, the Forest Service has it all wrong in measuring vehicle types. AIMMCO's proposed ore truck (it has several options to choose from, it will use one that fits on the roads) is smaller than one proposed by the Forest Service. In fact, the tire width of AIMMCO's proposed ore truck is 6 feet, two inches, which is narrower than the CAT D250B proposed by the Forest Service! The Forest Service also has mischaracterized AIMMCO's proposal by indicating that AIMMCO will use a "rubber tired drill rig." This has never been designated.

50

¹⁰ Significantly, AIMMCO will not be limited by the Forest Service generalizations about the size of roadbed widths when they were constructed. AIMMCO's proposal is to clear roads to the widths of the existing roadbeds. This may be wider than what the Forest Service indicates. For instance, on the road from Pueblo Summit to the mine, the Forest Service talks in terms of width of the road as originally constructed. AIMMCO's proposal is to determine the road to its width as of 1984, not to determine how wide the road was when it was constructed. The same is true for existing roads on the claims. AIMMCO will restore them to existing roadbed widths, whatever those may be.

53

¹¹ In addition to lacking authority for this, the Forest Service has confused many issues in this regard. For example it is apparent that the Forest Service is confusing wheel base with the width of the axle.

52

streams below the road for most of the length of the road from Pueblo Summit to the mine. Alternative C's proposal to haul out slough that cannot be incorporated into the road is unreasonable and serves no identified purpose.

By repairing and maintaining existing roads that have been allowed to degrade, AIMMCO will reduce the adverse environmental effects that may be associated (it appears that there are none, but in any event, the condition of the roads will be improved) with the deteriorated condition of the existing roads.

Alternatives C, while compliant with the road condition indicator, is illegal in the scope of remediation is requires. *See* Section III.D. Alternative D has the same problem and fails for its lack of reasonable access to the claims and allowing the existing roads in the wilderness to degrade. Again, only Alternatives B or B1 are compliant because they provide safe and reasonable access that protects the environment and prevents long-term degradation.

3. Issues #3 and 4. Wilderness Character and Wilderness Experience.

This issue according to the DEIS assess the effects on the natural integrity and untrammelled condition of the wilderness. This issue, and the problems with the subjective, result-oriented nature of the analysis in the DEIS in considered in detail in Section III.E. The resultant, and admittedly inevitable, subjectivity of the analysis of the wilderness issue, which is really a discussion of social rather than environmental issues, demonstrates that this section should either be removed from the final EIS or relegated to a discussion apart from the measurable environmental effects.

In summary, as noted by the Forest Service, the "Wilderness [sic] character of the area in NOT pristine. There is an old roadbed. This detracts from the Wilderness character. there [sic] is also existing mining debris, cabins, old exploration roads, existing mine addits [sic] and the existing single track trails. Jane Cropp email (July 25, 2002) (Appendix C). In other words, the 1996 Plan proposes mining activities in an existing mine area accessed by an existing road. Very little actually is going to change on the ground.

Under Alternatives B and B1, the wilderness resource is protected by housing the crew in an existing bunkhouse. Alternative C maximizes vehicle trips and Alternative D requires disturbance of a natural area for a camp. Additionally, Alternatives B and B1 are compliant because they protect the historic buildings and uses. Alternatives A, C and D are non-compliant in this regard.

In terms of the overall effects on natural integrity indicators, Alternatives A, B, B1, C and D are all minor and compliant.

4. Issue #5. Water Quality

The analysis indicator here assesses the estimated change in sediment delivery and the risk of metal contamination. An objective analysis shows that under Alternatives B and B1, the additional sedimentation that may be generated by AIMMCO, to the extent it is even measurable,

will not adversely affect streams. Additionally, risks of metal contamination are extremely low for this project.

a) Alternatives B and B1 Maintain Water Quality in Smith Creek and Logan Creek

The DEIS criticizes the 1996 Plan for potentially contributing an additional 1.2 tons of sediment into the Smith Creek drainage over baseline sedimentation. The DEIS estimates 18.4 tons/year of sediment delivery currently from public road FR 371 and 373. Notably, the practical evidence that this does not create an adverse environmental impact is in the fact that the Forest Service has done nothing over the past decades to mitigate this sediment load. The empirical data, as discussed below, bear this out. The Smith Creek drainage has anthropogenic sediment levels more than 10 times higher than 18.4 tons contributed by the existing roads. All evidence also points to the fact that Smith Creek is a properly functioning stream.

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Against this backdrop, the Forest Service alleges adverse environmental impact and requires remediation because of a predicted 1.2 tons of additional sediment in the Smith Creek drainage from AIMMCO's activities. The data does not support this conclusion.

The reason for this lack of action by the Forest Service is because the sedimentation from the FR 371 and 373 does not adversely impact the environment. Likewise, the 1.2 tons/year of additional sediment predicted by the Forest Service under Alternative B will not adversely impact the environment. Similarly, the Forest Service model predicts an immeasurable 0.1 tons of sediment to Logan Creek. The sediment issue is discussed in detail in Appendix A.

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In summary, the Smith Creek drainage has a natural sediment transport rate of 210 tons/year. Even assuming the 1.2 tons of additional sediment predicted in the DEIS from the roads actually reaches Smith Creek (which is unclear in the DEIS), the DEIS fails to demonstrate that this creates an adverse environmental impact. This is confirmed in the Kleinfelder Report in the section discussing fisheries, which confirms that the habitat conditions in Smith Creek and its tributaries are excellent relative to sediment and that the levels of anthropogenic sources of sediment have no significance in relation to the natural level of sediment produced by these watersheds, the management measures required by Alternatives C and D are not justified. These measures have not been demonstrated to improve channel conditions, habitat, or beneficial uses.

Additionally, the DEIS appears to indicate that the 1.2 tons of additional sediment assigned to AIMMCO's activities makes the incorrect assumptions that AIMMCO is going to widen all the fords to 12 feet and will install only 2 water control structures. See DEIS, Appendix D. In other words, to generate even an insignificant sediment increase associated with AIMMCO's activities, the Forest Service has to mischaracterize the 1996 Plan. It appears from documents in the project record that AIMMCO's actual proposal will significantly reduce current sedimentation. See M. Dixon Comparison of Alternatives (January 27, 2003) in Appendix C.

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Finally, the model also appears to overestimate sediment delivery by choosing exclusively "sandy loam" as the input rather than "loam" even though the DEIS indicates that on page 3-82 that soils in the analysis area "have surface textures of loam and sandy loam." Using

loam or a combination of soil textures that includes loam likely would reduce predicted sediment delivery.

b) The Golden Hand Alternatives B and B1 Maintain Water Quality in Coin Creek and Beaver Creek

The Kleinfelder Report also demonstrates that water quality inside the Wilderness will not be degraded as a result of the 1996 Plan activities. First, Alternative B in the DEIS overestimates the reasonably expected increase in sediment load by assuming that AIMMCO will not employ any sediment mitigation measures in the construction of trenches or roads and that trenches would be left open. These assumptions lead to inflated conclusions about likely sedimentation in Alternative B. Alternative B1 clarifies these assumptions, and it is clear that significantly less than the 5.1 tons/year of additional sediment predicted will actually reach the streams.

But even if 5.1 tons of sediment were to reach the streams, there is no evidence that this would degrade water quality in either Coin Creek or Beaver Creek. As explained in the Kleinfelder Report, the morphology of Coin Creek is such that a 5.1-ton increase in sediment would likely be flushed down the stream and would not impair beneficial uses in the stream.

Downstream from Coin Creek, the increase of 5.1 tons of sediment to Beaver Creek would be undetectable. This is because Beaver Creek naturally carries 255 tons of sediment per year. See Kleinfelder Report. As explained in the Kleinfelder Report, beneficial uses in the stream would not be affected.

The Kleinfelder Report also points out that, as with the non-wilderness road analysis, the model used to predict sediment delivery likely overestimates sediment delivery by using only “sandy loam” as the soil type input even though the analysis area includes loam soils in addition to sandy loam soils. The model also appears to underestimate current sedimentation by failing to account for heightened erosion from foot and pack stock travel on the existing roads in the wilderness.

c) The risk of metal contamination is de minimus and can be monitored under any alternative

The DEIS recognizes that the past mining operations have not caused a metal contamination problem. The risk of metal contamination based on the minimal development work proposed is therefore *de minimus*. Monitoring under all alternatives will identify any problems that do arise. All alternatives are compliant.

5. Issue #6. Riparian Areas and Wetlands

The DEIS considers six factors to evaluate impacts upon riparian areas and wetlands. The end result of this analysis is none of the Alternatives A, B, B1, C, or D have any significant impact on riparian areas or wetlands. All alternatives are compliant.

This is because the development of the mining claims will not have any significant impact upon riparian areas or wetlands and there are no endangered or threatened fish in the resource

area. The amount of riparian and wetlands area impacted by the 1996 Plan is *de minimus*. Alternatives A and D are no action alternatives. In sum, none of the alternative has any significant impact on riparian areas or wetlands.

6. Issue #7. Fish Populations and Habitat of Concern

To assess environmental effects of fish habitat, the DEIS analyzes five habitat indicators: 1) large wood debris (LWD), 2) fine sediment levels, 3) stream flow, 4) chemical contamination and 5) road density and location. The DEIS, while drawing the conclusion that Alternative B may affect these more than Alternatives C and D, does not identify any evidence to show that fisheries actually will be affected in a negative way. In fact, the data is to the contrary. The activities in the 1996 Plan, even when characterized as negatively as possible as done by the Forest Service in Alternative B, will not adversely impact fisheries. And when the 1996 Plan is characterized as we have described in Alternative B1, it is even more clear that fisheries will not be affected. All Alternatives are compliant.

57

a) Large Woody Debris

First of all, it should be noted that there are no fish in the immediate project area, thus there is no fish habitat. The reduction of LWD in the project area therefore is not a meaningful determinant of fishery health. See Kleinfelder Report. Also, disruption to the recruitment of LWD in the project area must be viewed in terms of fraction of the Coin Creek watershed that will be affected by this relatively small project. While the mining operations under the 1996 Plan could possibly reduce the amount of LWD available in Coin Creek, there is no data to indicate that the reduction would be significant in terms of the entire watershed or that any possible reduction will have adverse impacts.

Moreover, in Alternative B1, we have proposed the reasonable condition that trees will not be removed in RHCA's unless absolutely necessary for mining purposes. Thus, the DEIS the impact to LWD from the 1996 Plan activities as described in Alternative B actually will be further mitigated.

All Alternatives are compliant with the LWD indicator.

b) Fine Sediment Levels

As we describe in detail in the earlier section on water quality, there is no basis in the DEIS upon which to conclude that the predicted sediment levels (even the exaggerated ones associated with Alternative B) will cause and adverse environmental impact. The Kleinfelder Report confirms that fine sediment levels in the Smith Creek watershed are well below levels required to maintain the streams' beneficial uses. Logan creek, with an addition of one-tenth of one ton of sediment, will not be adversely affected by AIMMCO's activities.

58

With regard to fine sediment levels in the wilderness, even assuming the inflated sediment loads assigned to Alternative B, there is no indication that there will be an adverse impact. Even assuming the high sediment loads described in Alternative B, the Kleinfelder Report reaches the opposite conclusion that fisheries are not likely to be measurably affected. This is because all spawning areas are well downstream of the claim area, 2) the amount of

loam or a combination of soil textures that includes loam likely would reduce predicted sediment delivery.

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As we describe in detail in the earlier section on water quality, there is no basis in the DEIS upon which to conclude that the predicted sediment levels (even the exaggerated ones associated with Alternative B) will cause and adverse environmental impact. The Kleinfelder Report confirms that fine sediment levels in the Smith Creek watershed are well below levels required to maintain the streams' beneficial uses. Logan creek, with an addition of one-tenth of one ton of sediment, will not be adversely affected by AIMMCO's activities.

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With regard to fine sediment levels in the wilderness, even assuming the inflated sediment loads assigned to Alternative B, there is no indication that there will be an adverse impact. Even assuming the high sediment loads described in Alternative B, the Kleinfelder Report reaches the opposite conclusion that fisheries are not likely to be measurably affected. This is because all spawning areas are well downstream of the claim area, 2) the amount of

sediment added to the fish bearing streams is small, 3) there is abundant LWD to trap sediments, and 4) current levels of fines are very low, well below levels indicating an unhealthy stream.

58

In sum, the proposed activity will have no significant effect on fine sediment levels in spawning locations in lower Logan, Smith, Coin or Beaver Creek. All Alternatives are compliant.

c) Stream Flow

The DEIS concludes that a withdrawal of more than 10% of the flow of Coin Creek will cause detrimental effects. Here again, there simply is no evidence that such effects will occur. Even if AIMMCO withdraws the quantities of water indicated, there is no data to suggest this will have any measurable effect on Coin Creek—indeed, there is not even any baseline flow measurement—or, more importantly, that a 10% withdrawal would have negative effects on downstream fisheries. *See* Kleinfelder Report.

59

All Alternatives are compliant.

d) Chemical Contamination

The risk of chemical contamination is low. We note that the DEIS exaggerates the potential for chemical contamination from acid generation. *See* Kleinfelder Report.

e) Road Density and location

When road construction is properly characterized as construction of new roads, the measure of road density and location with regard to the 1996 Plan is negligible. Alternatives B, C, and D are minor increases, none of which show an identified adverse impact to fisheries. All the alternatives are compliant.

7. Issue #8. Wildlife Populations and Habitat

The DEIS discussed wildlife resources at 3-127 to 3-149. One thing is clear, none of the alternatives have any significant impact or modify habitat or have lasting human impacts on wildlife populations. All alternatives have little or no adverse affect on wildlife or wildlife habitat. Mining activities, the proposed use of vehicles in the wilderness and the proposal to occupy the bunkhouse “may” impact wildlife movements and displace wildlife population during the operating season (DEIS 3-27). This essentially means there is a summer only impact for a short period of time. The Forest Service’s preferred Alternative C will have more impacts because of general disruptions created by required commuting. Nothing in the wildlife populations or habitat analysis in any way disfavors Alternatives B or B1.

8. Issue #9. Noxious Weed Establishment and Spread

DEIS at 3-151 discusses the impact of the various alternatives on noxious weed establishment and potential spread in the areas adjacent to the project area. It is clear from this analysis that none of the alternatives have any impact upon the noxious weeds indicator and, therefore, Alternatives B and B1 meet these requirements.

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The only alternative which may impact noxious weeds is the no action alternative because of its encouragement of the use of animals in the forest which bring noxious weeds on their bodies or hooves. Golden Hand's proposal has no impact on noxious weeds and is compliant.

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9. Issue #10. Cultural Resources and Tribal Trust Responsibilities

DEIS at 3-155 discusses the effects of proposed activities and alternatives on cultural resources and tribal trust responsibility indicator. Essentially none of the alternatives have any impact.

Only the Golden Hand Alternative B meets the goals of the National Historic Preservation Act by preserving the bunkhouse and other structures for later generations. This, in and of itself, is a reason to approve the Golden Hand Mine proposal because it will preserve a historic portion of Idaho which is rapidly disappearing.

61

D. The Golden Hand Alternative B Requires no Amendments to the PNF

The Golden Hand Plan of Operation will have an insignificant impact on the PNF and FC-RONR. Only minor disturbances and insignificant impacts are involved. The sediment increase for the Golden Hand Alternative B is one ton of a cubic yard of sediment! Still the Forest Service exaggerates impacts arguing that the Forest Plan must be amended for non-significant items. DEIS 2-7; 2-8.

Even the Forest Service recognizes the insignificance of the Plan of Operation. All amendments to the Forest Service Plan are insignificant. The DEIS states "these amendments would be one time, site specific, non-significant amendments that would not change overall forest plans, goals, objectives, desire of future conditions, or associated outputs." (emphasis added) DEIS 2-7.

In fact, the amendments are so non-significant as to be imaginary. A look at the twelve suggested Forest Plan Amendments at DEIS 2-7 establishes that none are needed. For example, the DEIS for "mineral management" asserts that five (5) amendments to LRMP Forest Plan Standards and Guidelines at IV-99, IV-100 and IV-101 are required. A review of the Forest Plan "Goals and Objectives for Mineral Management" establishes that the Golden Hand Alternative B is already allowed and requires no Plan amendment. The Forest Plan Goal to "Encourage and facilitate the orderly exploration, development, and production of mineral and energy resources on the Payette National Forest by private industries." LRMP IV-99, is expressly met by the Golden Hand Alternative B.

62

For example, surface disturbances are allowed "according to the Operating Plan" LRMP IV-101. "All practicable measures" to protect fisheries are allowed LRMP IV-100 and "mining development roads shall be constructed" to assure adequate drainage and minimize "where practicable" damage to soil, LRMP IV-101. Finally, "a permanent acceptable ground cover" must be provided, Plan IV-10. Each of the ten (10) Plan amendments suggested by the DEIS are for activities already allowed.

CONCLUSION

In these comments we have demonstrated that the DEIS, and specifically proposed Alternatives C and D, currently do not comply with Judge Winmill's Order and other substantive law. To be legal, the EIS on the 1996 Plan needs to consider alternatives that are within the realm of the Forest Service's legal authority. Alternative B is the only alternative in the DEIS that fits within this category.

We have proposed an Alternative B1 that, unlike Alternative B in the DIES, views the activities proposed in the 1996 Plan in light of the scope of the activities actually proposed in compliance with applicable laws, and with reasonable mitigation imposed.

These comments urge the Forest Service to consider Alternative B1 in the final EIS. Like Alternative B, B1 is legally permissible and it balances AIMMCO's right to mine with the Forest Service's task of minimizing where possible impacts to surface resources. The Forest Service should select Alternative B1 as the preferred alternative and the basis for the ROD.

63

APPENDIX H. RESPONSE TO COMMENTS

APPENDIX H

RESPONSE TO COMMENTS

NEPA regulations require that the Forest Service respond to all substantive comments. Substantive comments include comments that question the accuracy or adequacy of the information provided in the DEIS and comments that present new reasonable alternatives.

40 CFR 1503.4 states that the agency may respond to comments in five ways:

1. Modify alternatives
2. Develop new alternatives
3. Supplement, improve, or modify the analysis
4. Make factual corrections
5. Explain why comments do not need further response.

More than 1,200 written communications were received on the DEIS. Approximately 142 included specific, personalized comments from agencies, organizations, governments, and individuals. More than 1,050 communications were electronic variations of the same form letter that included three specific comments.

The response to comments is organized in three sections.

- **Section One** responds to comments submitted by federal, state, and local government agencies, and American Indian Tribes. These eight comment letters were reproduced with the substantive comments identified by a bracket and a number in Appendix G.
- **Section Two** responds to comments by the project proponent. AIMM's comment letter was reproduced with the comments identified by a bracket and a number in Appendix G.
- **Section Three** responds to the comments in the remaining 133 individual letters and the one form letter. In Section Three, comments are organized by major topic and subtopic. For example the major topic may be the "Fisheries Resource", and the subtopic may be "effects to fish habitat from sediment". An attempt was made to avoid addressing topics that had been previously addressed in Section One or Section Two, with the exception of topics that required a lengthy discussion or that were raised by many individuals and/or groups. These types of topics were generally duplicated in Section Three.

The topic and subtopic headings are displayed below.

1. Process

- a. Timeliness
- b. Social Impact Analysis and Civil Rights Impact
- c. Socioeconomics
- d. Sets a Precedence
- e. Cost of Analysis
- f. Claim Purchase
- g. Claim Validity

2. Scope of the Operations (Minerals and Geology)

- a. Cyanide Use
- b. Type of Equipment
- c. Use of Walker Millsite
- d. Reclamation and Bonding

3. Compliance with Forest Plan and Biological Opinions

- a. PACFISH
- b. Forest Plan Amendments
- c. Biological Opinion on Forest Plan

4. Compliance with Laws & Regulations

- a. 1872 Mining Law, Wilderness Act, Endangered Species Act, and Clean Water Act
- b. NFMA
- c. Property rights
- d. FSM (including 7700)
- e. CFR 228 A
- f. RS-2477
- g. State Water Law

5. Coordination with Local and State Governments and Tribes

6. Alternatives

- a. Preference
- b. Range

7. Occupancy

- a. Protection from theft
- b. Bunkhouse off claim
- c. Other locations

8. Roads and Access Management

9. Minerals

10. Wilderness

11. Soil and Water

12. Fisheries

Section One:

Responses to Comments

Federal, State, Local, and Tribal Governments

Comment # & Summary	Response
Letter #1 - Environmental Protection Agency	
1. <i>Potential impacts associated with milling operations</i>	The Walker Millsite is an independent millsite with a plan of operations approved in 1990. The mill consists of a 50 ton-per-day ball mill, spiral jigs, and a small flotation circuit. Mill tailings are deposited in a 50'W x 100'L x 8'D impoundment. The mill is authorized to accept ore from any mine in the area. Processing of the limited quantity of bulk samples (60-140 yd ³) proposed for removal at the Golden Hand property requires no additional authorization.
2. <i>Characterization and Use of Waste Rock</i>	<p>Approval of the plan of operations would not authorize "production" activities, but would allow the mining of bulk samples. The extent of ore extraction is limited to the removal of a maximum of ten 14 yd³ dump trucks (DEIS, p. S-2). AIMM (Ivy 2002b) (see DEIS, p. 6-5) confirmed that the maximum ore extraction would be 140 yd³. The specific volume of waste rock to be generated has not been explicitly stated by AIMM. In the FEIS, we have clarified that the volume of waste rock placed on the dump would be monitored. Should the operator anticipate generating more than 20 yd³ of waste rock, further testing of the rock would be required. If the mining of bulk samples generates additional waste rock, the total volume would be limited to approximately 300 yd³ as explained in the FEIS (Errata for pp. 3-22 to 3-23).</p> <p>The waste rock has been tested for its potential to generate acid rock drainage using the Acid-Base accounting screening procedure. Metamorphic rock (primarily on the upper dump) may generate acid drainage, while igneous rock (primarily on the lower dump) is not likely to (DEIS, p. 3-90). Details of the test results are available in the Soil and Water Specialist Report (Project Record). Characterization of the waste rock for leachable metals was not done, but the very low concentrations of metals in the lower adit drainage water and Cache Creek below the mine site (DEIS, p. 3-85) suggests a low potential for metal contamination of water moving through the dumps. The greatest potential source of acid drainage and/or metals leaching would be the placement of additional waste rock from the upper adit on the dump. Small volumes of waste rock are likely to be removed based on the limited ore extraction proposed and the observation that the mine workings are open and accessible. A provision requiring further testing if more than 20 yd³ of waste rock has been added to the analysis (FEIS, Errata for p. 3-90). The primarily igneous waste rock from the lower adit is not likely to generate acid drainage (NP/AP ratio of 3.5) (DEIS, p. 3-90), hence it was chosen as an aggregate source.</p>
3. <i>Effects of waste rock used as aggregate</i>	The waste rock at the lower adit is discussed above. The waste rock at the Werdenhoff mine proposed to be used for aggregate is highly unlikely to generate acid drainage (NP/AP ratio of 23 (Project Record). A metals leachability test (SPLP or equivalent) would be done on both sources prior to use as aggregate (FEIS, Errata for pp. 3-46 and 3-90).

Comment # & Summary	Response
Letter #1 - Environmental Protection Agency	
4. <i>Post land use objectives and reclamation planning</i>	The Golden Hand Mine site is within the Congressionally designated Frank Church River of No Return Wilderness. There is no intent to change this land designation. The area will be returned to as near a natural state as possible at the conclusion of this project and any subsequent mine development activity. The proposed reclamation activities for each alternative are described for each alternative in the DEIS (Chapter 2) with additional clarification provided in the FEIS (Errata, pp. 2-7, 2-17, 2-23, and Chapter 3 under Minerals and Geology).
5. <i>Financial Assurance</i>	Preparation of a reclamation bond is an administrative process that takes place after an alternative is selected in the decision and a final plan of operations developed. Recent experience has shown that reclamation bonds should be reviewed for adequacy during the construction phase of a project, and again when construction is complete. Opportunities for concurrent reclamation may be identified at any time during a project and bonds adjusted accordingly. The final plan of operations for this project would include a requirement that the reclamation bond be reviewed at least annually and adjusted, if necessary.
6. <i>Compliance with State water quality standards for sediment</i>	<p>The sediment analysis and discussion of beneficial uses is found in the DEIS (pp. 3-76 to 3-77 and 3-88 to 3-89). The following summary provides an update and clarification to the effects discussed on pp. 3-88 and 3-89.</p> <p>The Idaho Antidegradation Policy requires that “existing instream uses and the level of water quality necessary to protect the existing uses shall be maintained and protected” (IDAPA, 16.01.02.051.01). We believe that the analysis supports the Antidegradation Policy, in that salmonid spawning and rearing and cold-water biota protection from accelerated sediment production, would not be precluded by any of the alternatives, except Alternative B. While there may be a risk from several sources, including accelerated sediment, to ESA listed species (see Fisheries Resource section and Biological Assessment), the goals of ESA and the Antidegradation Policy are not the same.</p> <p>Under Alternatives C and D, the WEPP model predicts that project-related sediment delivery would decline in the Smith Creek subwatershed, resulting in potential benefits to fish and fish habitat. In the Beaver Creek subwatershed, a variety of activities, including sediment delivery, may cause impacts to listed fish species. Modifications included in Alternatives C and D would largely decrease risk and meet the intent of Idaho’s Antidegradation Policy.</p>
7. <i>Quality assurance protocols</i>	The FEIS includes the commitment to follow quality assurance (QA) planning protocols (Errata for pp. 2-16, 2-22, and attached monitoring sheets).
8. <i>Discharges may require NPDES permit</i>	The DEIS and ROD disclose the responsibility of the proponent to comply with all state and federal laws and regulations, including obtaining all necessary permits (DEIS, pp. 1-5, 1-19, 1-20, 3-76, 3-90, FEIS Errata for 3-90). The EPA and IDEQ would determine if discharge and storm water permits are required. It is AIMM’s responsibility to acquire all applicable permits for the operation.
Letter #2 – United States Department of the Interior	
1. <i>“...domestic water use... is unrealistic...”</i>	We concur with your comment (see DEIS, pp. 2-16, 2-22).

Comment # & Summary	Response
Letter #3 – Idaho Department of Environmental Quality	
1. Connection between proposed POO and Walker Millsite cyanide permit	Sulphide ores are generally not amenable to cyanidation. The use of cyanide was not proposed in the plan of operations for the Golden Hand No. 3 and No. 4 Lode Mining Claims and is, therefore, not a component of the NEPA analysis. AIMM has indicated the production milling method would be “gravity plus flotation” (Mashburn 1988).
2. Alternative B must be rejected as unlawful	We acknowledge your comment that Alternative B is unlawful. The project is required to comply with applicable state laws related to air, water, and solid waste management (DEIS, p. 1-5). DEQ’s authorities in this regard are described in the DEIS (p. 1-20,) and in the Record of Decision (ROD).
3. Address storage and handling of hazardous materials	Storage and handling of hazardous materials is addressed in the DEIS on pages 2-6, 2-14, and 2-21. Alternatives C and D further address these issues by requiring the operator to adhere to the guidelines in Chapter 7 of the Best Management Practices (BMPs) for Mining in Idaho manual (DEIS, p. 3-120). Although a Spill Response, Containment and Cleanup Plan is required by these DEQ guidelines, the Forest Service does not require a formal plan when the total volume of materials used is less than 1,320 gallons, as is likely in this project (40CFR112(A)). Nevertheless, a plan addressing spill response is required (DEIS, p. 3-120). Although the State of Idaho BMPs provides guidelines for the disposal of waste products, they do not require the development of a “product specific waste disposal plan” as suggested by DEQ. Further regulatory guidance on petroleum and chemical handling is provided by the Soil and Water Conservation Practices (SWCP) Handbook (FSH 2509.22). A SWCP/BMP crosswalk is listed in Appendix D (DEIS, p. D-10).
4. Adequately address final reclamation	<p>Preparation of a reclamation bond is an administrative process that takes place after an alternative is selected in the decision and a final plan of operations developed and approved. Recent experience has shown that reclamation bonds should be reviewed for adequacy during the construction phase of a project, and again when construction is complete. Opportunities for concurrent reclamation may be identified at any time during a project and bonds adjusted accordingly. The final plan of operations for this project will include a requirement that the reclamation bond be reviewed at least annually and adjusted, if necessary.</p> <p>Conceptual reclamation of specific project components, as well as criteria for determining success, are included in the FEIS. General reclamation measures proposed under the various alternatives are described in the DEIS on pages 2-7, 2-17, and 2-23. More detail regarding drill hole abandonment and drill pad reclamation can be found in Appendix D (DEIS, p. D-19).</p>
5. Proponent should bear monitoring and evaluation costs	We acknowledge your comment that monitoring and evaluation costs should be borne by the proponent. Evaluation of the effects of increasing the workload of the agencies involved with this project is outside the scope of this analysis.

Comment # & Summary	Response
Letter #3 – Idaho Department of Environmental Quality	
6. Compliance with Idaho State rules for waste management and air pollution	The DEIS specified that the operator must comply with state law related to air, water, and solid waste (p. 1-5) and stated that “Non-human solid and liquid waste would be disposed in approved facilities off Forest” (DEIS, pp. 2-15, 2-21). To better respond to DEQ’s concerns, the description of Alternatives C and D in the FEIS was modified to include the following language: “No solid or liquid wastes, as defined by Idaho’s Solid Waste Management Rules, would be burned, buried, or otherwise disposed of, on-site and must be removed from NFS lands for proper disposal” (see FEIS, errata for p. 2-15 and 2-21).
7. Consistency with State law	The plan of operation is required to comply with State law as stated in the DEIS (pp. 1-5, 1-20) and further defined in the FEIS and Record of Decision (ROD).
Letter #4 – Idaho State Parks and Recreation	
1. Analyze an alternative that would use smaller scale motorized equipment without road widening	To minimize impacts to soil and water, and fisheries, Alternative C required the use of smaller vehicles and equipment that would not require widening of FS Trail #013. Therefore, the addition of this alternative (Alternative J), would not display a substantive change in effects and did not warrant further study in the FEIS.
Letter #5 – Idaho Fish and Game	
1. Adopt Alternative D	We acknowledge your preference.
2. Alt. D minimizes.... environmental effects	As shown in the analysis throughout the DEIS, both Alternatives C and D include measures to minimize adverse environmental effects.
3. Disagree that Alt. C would have positive cumulative effect on roads and access management	The DEIS on p. 3-46 describes cumulative effects only in relation to roads and access management. These effects are distinct from cumulative effects to the Wilderness Resource (DEIS, pp 3-68 to 3-69). The expected positive effects to roads result from extensive road improvements planned for FS Roads #371 and #373. Access in the Wilderness on FS Trail #013 would not change for the general public under any of the action alternatives. Under Alternative C, minor “light construction” (DEIS, p. 2-13) would occur on FS Trail #013. Only AIMM’s crew would be allowed to use the trail as a “road” over the three-year operating period.
4. Non-compliance with B.O.s	Non-compliance with Biological Opinions is discussed in Section Three under Topic 3, “Compliance with Forest Plan and Biological Opinion”.
5. Roads alter groundwater flow...	That roads can alter subsurface water flow is acknowledged in the DEIS on p. 3-73.
6. Update section on gray wolves	Current numbers were not given for any of the wildlife species discussed in this document. Effects to species were determined by addressing effects to habitat. The sentence “Transient lone wolves are known to occur in Idaho” has been changed to read “Transient lone wolves were known to occur in Idaho”. This discussion was in reference to conditions in Idaho prior to reintroduction of the wolf.

Comment # & Summary	Response
Letter #5 – Idaho Fish and Game	
<i>7. Effects from increased harassment and poaching of wildlife</i>	Mining operations will not significantly increase human presence in this area. The work crew would consist of six people (DEIS, p. 2-15). It is not anticipated that an additional 6 people would result in a noticeable increase in hunting pressure or poaching of wildlife.
<i>8. An interpretive display is not a mitigation measure</i>	The Wilderness Resource Specialist views the information provided in an interpretative display as an effective measure to help mitigate (lessen) the emotional response an individual might experience if they encountered the mining activities in the Wilderness without any prior knowledge of the operations.
Letter #6 - Board of County Commissioners, Idaho County	
<i>1. (See letter)</i>	We acknowledge your alternative preference.
<i>2. (See letter)</i>	Comment noted that mining is important to Idaho County.
<i>3. ...The grant of public right-of-ways was 80-feet wide for those lands within Idaho County.</i>	Comment noted.
<i>4. (See letter)</i>	We acknowledged the historic use at the Golden Hand Mine in the DEIS “History of the Golden Hand Mine Site” (p. 3-2). American Indian and mining history of the area is described on p. 3-157. More historic information is provided in the “Mining and Access History” section in the Project Record.
<i>5. ...No roads should be closed, regulated, or restricted without coordination</i>	No road closures or regulations of existing roads are considered in the EIS. The size of the vehicle used by the operator on FS Roads #371 and #373 would be restricted under Alternatives C and D (see Chapter 2). Through the preparation of the DEIS, FEIS, and ROD, including activities to solicit and involve the Board of County Commissioners in the proposed action, the Forest Service has coordinated with the Boards. These efforts include personal visits to the Board and public meetings as documented in the Project Record.
<i>6. The county has valid existing rights....</i>	Comment noted that the “county has valid existing rights”. Where these rights occur and what they are is unclear.
<i>7. Debate by the USFS on RS 2477 public right-of-ways....</i>	The Forest Service is not initiating debate on RS 2477 public rights of way. This was determined to be beyond the scope of the analysis (see DEIS, p. 1-15).
<i>8. (See letter)</i>	None of the alternatives considered in the analysis would cause destruction, obstruction or closure of a public right-of-way. FS Roads #373 and #371 would be improved under Alternatives C and D (see DEIS; Chapter 2 and Chapter 3- Soil and Water Resource Section and Roads and Access Management Section).

Comment # & Summary	Response
Letter #6 - Board of County Commissioners, Idaho County	
9. <i>..Protection of property from theft and vandalism.</i>	<p>The authority and responsibility for local law enforcement remains with the local counties. Cooperative law enforcement agreements would continue as they currently apply to National Forest System lands. The Project Record contains additional information on “<i>Customary Practices in Regard to Unattended Camps, Equipment, and Stock on the Krassel Ranger District Portion of the FC-RONR</i>”. This documents that outfitter camps may be left unattended for more than a day. Forest Service law enforcement databases reveal minimal vandalism to private property and unattended vehicles in and around the FC-RONR Wilderness on the Payette National Forest.</p>
10. <i>Jurisdictional boundaries: land use planning, use of public right-of-ways, work as equal partners</i>	<p>The Forest Service has involved the Idaho County Board of Commissioners and Valley County Board of Commissioners in the environmental analysis process for this mine proposal from the beginning of the scoping process through the end of the analysis leading to a decision. The analysis has benefited from the substantive written comments provided by the Counties, as well as comments from Federal and State agencies and Tribes.</p> <p>The CEQ Regulations for implementing NEPA allow for joint lead agencies where the other agency has joint decision-making authority, as well as for cooperating agencies in cases of jurisdiction by law or special expertise (40 CFR 1508.5, 1508.16). In this case, the majority of the decision making and analytical expertise for the mining project resided with the Forest Service, and no joint lead agency or cooperating agency was formally proposed or requested. Consistent with 40 CFR 1506.2 (b), the Forest Service has avoided duplication of its environmental review procedures with State and local procedures. Those most qualified by law and expertise to do the analysis were the ones who conducted the analysis. Consistent with 40 CFR 1506.2 (a), the Forest Service has cooperated “with State agencies of statewide jurisdiction” including the Idaho Department of Environmental Quality in the environmental analysis.</p> <p>CEQ Chairman Connaughton’s memo of February 5, 2002 encourages a “collaborative approach when making federal decisions that affect local communities.” It encourages federal agencies to welcome State, Tribal, and local governments “as partners in the environmental review process.” The Forest Service acknowledges your interpretation of this guidance as requiring “equal partners” between the county and the Forest Service. If the environmental analysis warranted joint lead agencies, then the situation would warrant “equal partners.” In this case where neither joint lead agency nor cooperating agency status was required under the definitions in the CEQ Regulations, the collaboration in which the Forest Service engaged the Nez Perce Tribe, the Shoshone-Bannock Tribes, the Valley County Board of Commissioners, and the Valley County Board of Commissioners was appropriate in effectively providing the planning benefits of NEPA, its implementing regulations, and Chairman Connaughton’s guidance. See the Record of Decision for further discussion of jurisdictional responsibilities and collaboration.</p>

Comment # & Summary	Response
Letter #6 - Board of County Commissioners, Idaho County	
11. <i>Social Impact Analysis and Civil Rights Impact Analysis</i>	<p>Forest Service policy does not require economic and social analysis for every proposed project or environmental analysis, but rather for projects with “major economic or social impacts.” “The responsible line officer determines the scope, level, and complexity of such analysis needed (FSM 1970). The DEIS discussed economic effects on pp. 1-12 to 1-13. The project would create only several seasonal jobs for three to ten years. No significant economic changes are foreseeable.</p> <p><u>Social Impacts</u> - The lack of economic effects indicates a lack of discernible effects to social groups with the notable exception of Wilderness users and “appreciators”. For a discussion of effects to this social group see DEIS, pp. 3-60 to 71. None of the alternatives are expected to have a discernible or disparate impact on any socio-economic group. They would not adversely affect disadvantaged, social, ethnic, economic, or minority groups because of the project area’s remote distance from large population centers and the few individuals directly affected. Expected effects of implementing the preferred alternative are similar for all human sub-populations, regardless of nationality, gender, race, or income.</p> <p><u>Civil Rights</u> - The alternatives in this EIS have little potential to affect most subsets of the general population identified through Civil Rights legislation and policies, and in Executive Order 12898 (Environmental Justice). These subsets include ethnic minorities (American Indians, African Americans, and Asian and Pacific Islander Americans), disabled people, and low-income groups. This applies to positive effects (employment) as well as adverse effects (fisheries and recreation disturbance). Beginning with the scoping process in April 2002, the Forest Service has conducted consultation with the affected Tribes. The Nez Perce Tribe expressed opposition to a “preferred alternative that could affect Tribal Trust resources, as well as threaten the efforts of Tribal, State, and federal fisheries managers to restore imperiled fisheries resources.” The Shoshone-Bannock Tribes have indicated that they also have concerns with the project.</p>
Letter #7 – Valley County Board of County Commissioners	
1. <i>(See letter)</i>	Through the preparation of the DEIS, FEIS, and ROD, including activities to solicit and involve the Board of County Commissioners in the proposed action, the Forest Service has coordinated with the Boards. These efforts include personal visits to the Board and public meetings as documented in the Project Record.
2. <i>Coordinate road closures or restrictions</i>	No road closures or road restrictions are considered in the analysis. Limits on the size of vehicle permitted under the operating plan are included in Alternatives C and D.
3. <i>Protection of property from theft and vandalism.</i>	The authority and responsibility for local law enforcement remains with the counties. We acknowledge this excerpt from the “Civil and Criminal Jurisdiction” section of the Act of June 4, 1897, the Organic Administration Act. The EIS alternatives and analysis are consistent with this statute and do not entail loss of jurisdiction by the State or its inhabitants.

Comment # & Summary	Response
Letter #7 – Valley County Board of County Commissioners	
4. USFS attempts to close, manage, and dictate, use of public rights-of-ways.	None of the alternatives considered in the analysis would close roads, manage, and dictate use of public right-of-ways. Forest Service Roads (FR) #373 and #371 would be improved under Alternatives C and D (see DEIS; Chapter 2 and Chapter 3 - Soil and Water Resource Section and Roads and Access Management Section).
5. You must adhere to state law	Adherence to state law is discussed in the DEIS (pp. 1-5, 1-19, 1-20)
6. The viable, preferred alternative is "B"	We acknowledge your preference.
Letter #8 -The Nez Perce Tribe	
1. The project would affect TES fish downstream of the project	See response in Section Three: Topic 12e
2. Preferred alternative is in conflict with the ESA, regional fish recovery efforts, maintaining Tribal Trust responsibilities, and two NOAA BOs	See responses in Section Three: Topic 3c and Topic 12c
3. (See letter)	We acknowledge your preference. The ROD recognizes that Alternative A is the environmentally preferred alternative.
4. Impacts of project on tribal resources	The DEIS (p. 3-111 – 3-126) and BA (Project Record) acknowledge that Alternative C could adversely affect fish. The alternative has been designed to significantly reduce risks of these adverse effects. PNF responsibilities to Federally recognized Tribes are discussed in the DEIS (pp. 1-18, 3-155 – 3-163). See also the detailed discussion on Environmental Justice and Payette National Forest responsibilities to federally Recognized Tribes in the Record of Decision.
5. Effects of toxic materials on fish	See responses in Section Three: Fisheries Resource -Topic 12f
6. Disregards ESA protections...	See responses in Section Three: Topic 3

Comment # & Summary	Response
Letter #8 -The Nez Perce Tribe	
7. Sediment delivery to streams...	See responses in Section Three: Fisheries Resource - Topic 12b
8. Effect of sediment on threatened fish species...	See responses in Section Three: Fisheries Resource - Topic 12b
9. Cumulative affects... mining claims ..1 and 2Three additional mineral operations in analysis area	Without a more specific proposal for the work on claims No.1 and No.2 it was not possible to quantitatively describe the effects. The three additional mineral operations (described in the DEIS, Appendix A, p. A-4) include protective measures to minimize sediment and chemical spills, and were determined NLAA in Biological Assessments of their ongoing activities (Wagoner 2001, Faurot 2002). The cumulative effects descriptions in the DEIS (pp. 3-94 and 3-125 and Appendix A) give a sufficient description of potential cumulative effects. Each resource area addressed cumulative effects to that resource over the cumulative effects analysis area (DEIS p. 3-124). In addition, the BA (see Project Record) provides an assessment of cumulative and combined effects to fisheries.
10. No watershed analysis has been prepared	See responses in Section Three: Topic 3, 3a and 3c As described in the DEIS (p. 3-100): "Due to the time constraints of the Court mandated direction (see Chapter 1), the Forest Service will not be able to conduct a watershed analysis and a selected action may not meet the direction of the 1995 Biological Opinion." The Forest has requested reinitiation of consultation with NOAA Fisheries on the PNF LRMP as part of the request for formal consultation on the Golden Hand Mine project (Final BA Transmittal letter from Mark Madrid to Ken Troyer, March 20, 2003).
11. Streams in the analysis area are "Tier 2 Waters" and must be maintained and protected (IDAPA 58.01.02(051). ...compliance with Antidegradation policy.	The sediment analysis and discussion of beneficial uses is found in the DEIS (pp. 3-76 to 3-77, 3-88 to 3-89, 3-93). The following summary provides an update and clarification to the effects discussed on p. 3-93. The Idaho Antidegradation Policy requires that "existing instream uses and the level of water quality necessary to protect the existing uses shall be maintained and protected" (IDAPA, 16.01.02.051.01). We believe that the analysis supports the Antidegradation Policy, in that salmonid spawning and rearing and cold-water biota protection from accelerated sediment production, would not be precluded by any of the alternatives, except Alternative B. While there may be a risk from several sources, including accelerated sediment, to ESA listed species (see Fisheries Resource section and Biological Assessment), the goals of ESA and the Antidegradation Policy are not the same. Under Alternatives C and D, the WEPP model predicts that project-related sediment delivery would decline in the Smith Creek subwatershed, resulting in potential benefits to fish and fish habitat. In the Beaver Creek subwatershed, a variety of activities, including sediment delivery, may cause impacts to listed fish species. Modifications included in Alternatives C and D would largely decrease risk and meet the intent of Idaho's Antidegradation Policy.

Comment # & Summary	Response
Letter #8 -The Nez Perce Tribe	
12. PACFISH compliance	See Section Three: Topic 3a. Alternative C largely complies with Standards and Guidelines for minerals projects in PACFISH (DEIS, pp. 3-24, 25). Compliance with one standard was listed as “mostly complies” in the DEIS.
13. Explain authority the Forest has in restricting ...water withdrawn pursuant to state law	Alternative B assumed a maximum water withdrawal proposed by AIMM and used this amount to assess resource effects. As shown in the analysis, (DEIS, pp. 3-116 to 3-119) there is no rationale for the withdrawal of water for domestic purposes. The Forest Service authority to regulate water occurs in the plan of operation. Through the plan, the FS can approve a specific waterline intake diameter to ensure that only a specific flow of water is delivered.
14. Validity of ore reserves	See discussion of non-significant issue: claim validity (DEIS, p. 1-12).
15. More detailed analysis of an alternative to provide access by helicopter.	The range of alternatives must address the issues. As described in the DEIS, helicopter access was identified as a method to respond to Wilderness-related concerns about road construction and motorized access. The IDT determined that access by packstock better addressed these issues. For additional discussion on why access by helicopter was considered but dropped, refer to the DEIS (p. 2-24), Project Record, and Record of Decision.
16. Missing an economics analysis...cost of project..., mitigation, ... socioeconomic and natural resource costs	Some costs are relatively easy to describe and are included in the analysis. For example, the costs of monitoring are identified on the monitoring sheets. Other costs are simply too unclear or speculative to make an economic analysis reasonable. Loss of wilderness characteristics were described in the wilderness resource section, but the economic cost associated with loss of wilderness experience and character is highly dependent on a number of factors that are beyond our ability to discern (these range from more obvious cost of loss of visitation, to the highly subjective costs associated with human emotions).
17. Provide estimated timeline of implementation	The estimated timeline for implementation of various proposed activities is addressed in a number of places in the EIS. Under Alternative B, the timeline for AIMM’s proposed 10-year operating plan is unclear. Under Alternatives C and D, mine development work must begin in the area of the inferred ore deposit as described in the DEIS (pp. 2-2-14, 2-20, Minerals and Geology section). All road improvements on FR #371 and #373 would need to be completed by September 15 of the first year of operations (FEIS, Errata for pp. 2-10, 2-20). Monitoring timelines are identified in the monitoring table (FEIS, Errata for p. 2-26) and the monitoring sheets (FEIS, Errata, Appendix E).
18.. Requests a copy of all Biological Opinions	The Forest Service provided copies of the existing Forest Plan Biological Opinions immediately upon receiving this request. The final Biological Opinions for this project will be provided when received.
19. Include rationale for non-significant Forest Plan amendment	See Section 3b. The rationale for the non-significant Forest Plan amendments for Visual Quality occurs in the DEIS (p. 1-13). The rationale for the amendment for compliance with PACFISH was clarified in the FEIS (Errata, p. 3-125). Additional response is provided under Topic 12 in Section Three of the Response to Comments. Additional information is available in the Project Record.

Comment # & Summary	Response
Letter #8 -The Nez Perce Tribe	
20. <i>Explain mitigation to address noxious weeds.</i>	Measures to minimize invasion and spread of noxious weeds into the Wilderness are described in the DEIS (pp. 3-151 to 3-154).
21. <i>Provide a map of active and potential mining claims within project area watersheds.</i>	<p>There are no active mining claims in the Coin Creek or Beaver Creek drainages, which were withdrawn from mineral entry in their entirety on December 31, 1983, by the Central Idaho Wilderness Act. This means no claims may be located in the future. The nearest active mining claims in the FC-RONR Wilderness are in the Thunder Mountain area, some 20 miles distant in the Monumental and Marble Creek watersheds.</p> <p>Numerous active mining claims (meaning annual maintenance fees are current) exist in the Logan Creek, Smith Creek, Government Creek, and Big Creek drainages outside the FC-RONR Wilderness. The only authorized mining operations on National Forest System lands are at the Velvet Quartz Mine in the North Fork Smith Creek and the Fourth of July Mine in Government Creek. The Camp Bird Mine is on private land in the Logan Creek drainage (DEIS, p. 3-10).</p>

Section Two:

Response to Comments by Project Proponent

The following section presents a full range of responses to individual comments from AIMM (Letter #134 in Appendix 1). Comments and responses are numbered 1 through 55. Some responses summarize what was proposed by Forest Service and what Forest Service responded. The full texts of comments and responses are in the Appendix 1.

No.	Response
1	The FEIS presents a full range of alternatives including the No Action alternative which is consistent with the National Environmental Policy Regulations at 40 CFR 1500-1508. The FEIS presents a full range of alternatives in the information submitted by AIMM as described in Page 1-2 of the FEIS. These alternatives or predictions are made regarding the impacts of alternatives. They are based on the best professional judgment of Forest Service personnel. Alternatives C and D are consistent with law, regulation and policy supporting the development of alternatives for proposals submitted in accordance with 40 CFR 1508. The different exploration methods and techniques analyzed in the Alternatives C and D were developed in order to minimize adverse impacts to surface resources consistent with the goal to develop the mineral resources under the 1872 Mining Law as amended. See discussion in Chapter 3 and 4 under Minerals and Geology, and in Appendix 1 in Introduction, Analysis of Plan Elements, and Findings and Recommendations.
2	AIMM's suggested alternative is made up of components of the various alternatives presented in the FEIS. For this reason a new alternative in the FEIS is not needed.
3	The conclusion, based on the analysis as documented in the EIS, is that all action alternatives would allow AIMM to exercise its rights under the mining laws consistent with the Forest Service obligation to minimize impacts to surface resources including those within the Frank Church River of No Return Wilderness. Alternative C (the Preferred Alternative) is designed to ensure that development activities can progress in a logical and sequential manner that will provide the foundation for, and not restrict or limit, future development methods or activities that may be required.
4	The appendices attached to AIMM's comment letter were considered in the Forest's responses in Section Two. Additional information and response is provided in the Project Record.
5	Impacts to the Smith Creek Road (FR 371) and Pueblo Summit Road (FR 373) (referred to by AIMM as the "Smith Creek roads") were included in the analysis because these Forest Service roads are proposed as access routes to the Golden Hand mine claims. We find no language in Judge Winnill's decision that supports AIMM's conclusion that such an analysis is in violation of his order. To ignore the use of these roads and associated impacts would violate requirements of NEPA and its implementing regulations as well as Forest Service Mining Regulations. AIMM's proposed plan would increase vehicle use on FR 371 and 373 by 250 roundtrips from the current estimated 70 roundtrips per year (DEIS, p. 3-40). The increased road use would cause additional road impacts such as rutting and erosion, particularly at stream crossings (DEIS, p. 3-40). The proposed operations would use the existing fords of the North Fork of Smith Creek. Increased vehicle traffic at these sites would increase disturbance at these stream crossings and add direct sediment input into the streams.

No.	Response
	<p>(DEIS, p. 3-40). Other road use related impacts are described in the Fisheries Resource section and Soil and Water Resource section.</p> <p>FR 371 and FR 373 are not public roads. Public rights-of-way under RS-2477 are discussed in the DEIS on page 1-15. Idaho and Valley Counties may claim them under RS 2477, however these claims have not been validated and the counties have no easements from the Forest Service on these roads.</p>
6	<p>The EIS shows that Alternatives C and D contain provisions for occupancy that are consistent with the scope of operations proposed and have the additional advantage of minimizing impacts to the wilderness resource. As noted in the EIS under Alternative B, the structure proposed by AIMM for occupancy lies outside the boundaries of the mining claims that have been determined to have valid existing rights. In that case, its modification and use could not be authorized under the 1872 Mining Law as amended and the Plan of Operation as submitted by AIMM.</p>
7	<p>The conclusion based on the analysis as documented in the FEIS is that all action alternatives would allow AIMM to exercise its rights under the mining laws consistent with the Forest Service's obligation to minimize impacts to surface resources including those within the Frank Church - River of No Return Wilderness (FC-RONRW). Alternative C (the Preferred Alternative) is designed to ensure that development activities can progress in a logical and sequential manner that will provide the foundation for, and not restrict or limit, future development methods or activities that may be required. The ROD will be based on the analysis presented in the EIS, hence we believe it complies with existing law and regulation.</p>
8	<p>See responses to comment #2 and #7, above.</p>
9	<p>All action alternatives presented in the FEIS would allow AIMM to exercise its rights under the mining laws consistent with the Forest Services obligation to minimize impacts to surface resources including those within the Frank Church - River of No Return Wilderness.</p>
10	<p>The EIS presented a range of reasonable alternatives as required by the NEPA and its implementing regulations. As evidence of the adequacy of the range of alternatives the Forest believes that the components of AIMM's B1 Alternative were analyzed in the EIS in one or more of the action alternatives. The Forest Supervisor's decision as presented in the ROD is based on this analysis and strikes a balance between AIMM's right to exercise its rights under the mining laws, and the Forest Service's obligation to minimize impacts to surface resources including those within the FC-RONRW.</p>
11	<p>In regards to action alternatives, see Response #1. The use and applicability of the No Action Alternative is discussed in Chapter 2 under Alternative 1 - No Action. As described there, there may be instances where all or parts of a plan of operation submitted in compliance with 36 CFR 228A may not be approved.</p>
12	<p>See responses to comment #3, #5 and #6 for discussions of legality of the alternatives, out of wilderness roads and Wilderness occupancy, respectively.</p>
13	<p>In addition to being legal as described in Response #3, we believe that all action alternatives comply with Judge Winmill's Order. The Order directed the Forest Service to complete processing of the proposed plan so work can begin during the 2003 mining season. AIMM interprets that order as requiring the Forest Service to process and approve the plan as proposed in order that every element of the plan be available for work during the 2003 season. We disagree. A reasonable reading of the order requires the Forest Service to follow appropriate statute and regulation to process the plan and allow appropriate legal access so that work can begin. "Work", taken in an appropriate context,</p>

No.	Response
	<p>simply means making sure that AIMM can begin operations during the 2003 field season without any conclusions as to the scope of the actual work to be undertaken. AIMM has indicated that some front-end work would be non-impacting and would not require approval. That work can begin anytime and much of it is a necessary precursor to other work AIMM plans. In addition, since AIMM plans to undertake the rest of the work over a time period that may well reach 10 years, other approved work would logically be sequenced as data evolve.</p>
14	<p>With respect to comments about the range and legality of alternatives -- see Response #3. It is important to note that AIMM requested and received a description of Alternatives B and C on December 11, 2002. AIMM was notified that the entire DEIS was available on the Internet on February 28, 2003, and AIMM received a hard copy of the DEIS shortly thereafter. On April 21, 2003 (ten days before the May 1 plan completion date ordered by Judge Winmill) AIMM proposed an alternative action. With respect to the detailed description of AIMM's proposed Alternative B1 that begins on page 11 of AIMM's letter, the Forest Service provides the following response:</p> <p>Access and Road Maintenance - The analysis (EIS and Project Record) documents the rationale for assuming AIMM's proposed Alternative B (DEIS, pp. 2-2, 2-3) would widen roads to an average 12 feet in width (DEIS, pp. 3-39 and 3-40). The Forest communicated with AIMM specifically about the size of AIMM's proposed vehicles and equipment early in the NEPA analysis process (Project Record). AIMM's proposed alternative (B1) would include "vehicles and equipment ...limited to size that can safely operate on existing roadbed widths..." The Forest Service determined this safe "size" (defined by tire tread width). This size of vehicle and equipment was included in Alternative C. In addition, AIMM did not provide specific information on the location, design and use of BMP's to be used in proposed Alternative B1. Use of clearly defined BMPs is included in Alternative C. In summary, the Forest has determined that Alternatives B and C provide a sufficient range of response to, and accurate analysis of, access and road maintenance concerns.</p> <p>With respect to County jurisdiction, we have received comments from Idaho and Valley County Commissioners on this subject as stated. The issue of jurisdiction was discussed briefly and dismissed from detailed study on Page 1-15 of the DEIS because a) no determination has been made whether a right-of-way exists under RS 2477, and; b) even were such a right-of-way determined to exist, any use, construction, reconstruction, or maintenance of roads that may affect National Forest System lands is subject to regulation by the Forest Service. Additional information is provided in the Response to Comments under Section One (Letter #6 and #7) and in Section Three, Topic #4.</p> <p>Road Construction - Because the old wilderness roadbeds were not part of the PNF classified road system, work on these roadbeds cannot be considered reconstruction (DEIS, p. 2-5). AIMM's description of road width is consistent with the description of work under Alternative C (DEIS, p. 2-13). Without additional information on the location, design and use of BMP's, the Forest has determined that the analysis of impacts discussed under Alternatives B and C remain valid and represent the range of impacts that could occur under action alternatives with vehicular access to the claims. For these reasons, Alternative B1 does not add to the range of alternatives in relation to road construction.</p> <p>Development Work - The work described here is essentially the same as described for</p>

No.	Response
	<p>Alternative B in the DEIS. In the 1996 Plan, AIMM specifically identified two existing adits on Golden Hand Claims 3 and 4 on the map provided with the 1996 proposed plan of operations (Ross 1996). AIMM's new proposal for development work at three mine openings does not measurably change the potential effects, particularly the effects related to waste rock (see FEIS, Errata for pp. 2-14, 3-22). No specific information is provided on the location, design and use of BMP's and trench locations could be moved to a "different location" based solely on "geology mandates". The Forest has determined that the analysis of impacts discussed under Alternative B in the DEIS would be essentially the same as described under Alternative B1. For these reasons, Alternative B1 does not add to the range of alternatives in relation to development work.</p> <p>Vehicles and Equipment - The general description of vehicles and equipment presented here is consistent with the descriptions under Alternatives B and C in the DEIS. The Forest believes that they would have similar impacts to mine development and the environment as described in the DEIS for those alternatives. Alternative B1 does not add to the range of alternatives in relation to vehicles and equipment.</p> <p>Hazardous Materials – This is the same as described in the DEIS for Alternative C as noted by AIMM, with the exception of AIMM's assertion that "that explosive use (is) not subject to approval by Forest Service" and AIMM's desire to use the existing powder house (described under Alternative B). The Forest does have the authority to regulate the use of explosives on NFS Lands including the timing and location of transport, storage and use. For these reasons Alternative B1 does not add to the range of alternatives in relation to hazardous materials.</p> <p>Timbers – This is essentially the same as described in Alternative B in the DEIS. Alternative B1 does not add to the range of alternatives in relation to timbers.</p> <p>Work Crew and Housing - Housing is essentially the same as described for Alternative B in the DEIS. Description of the outhouse, work schedule and lights and resulting impacts are within the scope Alternative C. For these reasons Alternative B1 does not add to the range of alternatives in relation to work crew and housing.</p> <p>Timing and duration - Adequately addressed in Alternative B in the DEIS. Alternative B1 does not add to the range of alternatives in relation to this element.</p> <p>Water – This is similar to Alternative B in the DEIS. No water right is associated with the bunkhouse. The Forest Service contacted Idaho DWR – no water rights were associated with any drainage in the vicinity of the claims (Project Record). In addition, the Forest Service must approve diversions on NFS lands. If the point of diversion is off-claim, the description of new, off-claim diversions on page 2-16 of the DEIS would apply. See also comments regarding use of the bunkhouse in Response # 6. Alternative B1 does not add to the range of alternatives in relation to this element.</p> <p>Noxious Weed Management - The suggested change would result in a risk of noxious weed introduction that falls between that represented by Alternative B and Alternative C and is therefore within the scope of the DEIS analysis. Alternative B1 does not add to the range of alternatives in relation to this element.</p> <p>Fire Prevention - The suggested change is similar to Alternative C in the DEIS and</p>

No.	Response
	<p>would not be expected to result in different impacts to the mining operation or surface resources. Alternative B1 does not add to the range of alternatives in relation to this element.</p> <p>Monitoring - The suggested wording does not represent a significant change from Alternative B. The effect of adopting such wording would result in impacts to the mining operation and environment that cannot be predicted, but would fall somewhere between Alternatives B and C in the DEIS. Alternative B1 does not add to the range of alternatives in relation to this element.</p> <p>Reclamation and Bonding - The suggested wording does not represent a significant change from Alternative B in the DEIS. The effect of adopting such wording would result in impacts to the mining operation and environment that cannot be predicted, but would fall somewhere between Alternatives B and C in the DEIS. Alternative B1 does not add to the range of alternatives in relation to this element.</p> <p>Forest Plan Amendments - The number of Forest Plan amendments required under Alternative B1 would fall somewhere between the amendments described under Alternative B and Alternative C in the DEIS.</p>
15	<p>With the respect to the allegations that alternatives in the DEIS are illegal or unreasonably limit the mining operation, see Response #s 3 and 7. The Forest refers to the administrative record and the Project Record as the source documents as opposed to the history provided by AIMM (on pp. 14-15). Our review shows that AIMM's history is inaccurate due to missing information and misrepresentation. Additional information on the history of the project and the NEPA analysis is presented on pages 3-2 and 3-3 of the DEIS, in the description of Alternative B (DEIS, p. 2-2) and in the Record of Decision.</p>
16	<p>The use and applicability of the No Action Alternative is discussed in Chapter 2 under Alternative 1 - No Action. As described there, there may be instances where all or parts of a plan of operation submitted in compliance with 36 CFR 228A may not be approved.</p>
17	<p>Alternatives C and D are consistent with the rights granted under the Mining Law as amended, and would not endanger or materially interfere with development of the mineral resource on the Golden Hand Claims. They are designed to ensure that development activities progress in a logical and sequential manner. Alternatives C and D permit AIMM a portion of their proposed plan as a starting point. There is no limitation, however, to the eventual scope of AIMM's mining activity as data show that other mining activity is reasonably incident to mining. That is the conclusion of the Surface Use Analysis (DEIS, Appendix B).</p> <p>This requirement for logical and sequential development, together with the different exploration methods and techniques analyzed in the Alternatives C and D, are legal and reasonable attempts to minimize adverse impacts to surface resources consistent with the right to develop the mineral resources under the 1872 Mining Law as amended. See discussions in Chapter 3 and 4 under Minerals and Geology, and in Appendix B in Introduction, Analysis of Plan Elements, and Findings and Recommendations. The legal framework for the Forest Service analysis, decision and response to American Independence Mines and Minerals Inc. (AIMM) Plan of Operation for the Golden Hand (Plan) is described in the Golden Hand Draft Environmental Impact Statement (DEIS) in Chapters 1 and 3 of the DEIS, as well as Appendix B. These descriptions include but are not limited to Purpose and Need, Decisions to be Made, Management Direction and</p>

No.	Response
	<p>Legal Requirements and Chapter 3, Minerals and Geology.</p> <p>A careful reading of the SUA shows that AIMM's charges regarding the SUA are incorrect. The SUA does not assert that there is no ore deposit. Rather, the SUA acknowledges a range of possibilities for the deposit: from one larger than AIMM estimates to no deposit at all.</p>
18	<p>The Forest believes that Alternative C and D as presented in the DEIS are consistent with the purpose of the 36 CFR 228A Regulations. They do not constitute micro-management and the Forest has not sought to preclude activities on the basis of a belief that a valuable deposit does not exist. The assumption of all action alternatives is that valid existing rights exist on the Golden Hand Nos. 3 and 4 Lode Mining Claims.</p>
19	<p>See Response #17. In addition, AIMM misinterprets language in the 1955 Act regarding "material interference". The reference in the Act is to the United States, its permittees, and licensees use of the surface and for access to adjacent lands. The statute goes on say that such use shall be such as to not endanger or materially interfere with mining activities and uses reasonably incident thereto. We note that the United States is not using the surface and the United States has no permittees or licensees using the surface on AIMM's mining claims that could endanger or materially interfere with operations.</p>
20	<p>Presents AIMM's interpretation of 36 CFR 228.4 as it relates to Plan information differs from the Forest Service's interpretation. The information presented in a Plan of Operation although guided by 36 CFR 228.4 must also be adequate to allow the Forest Service to make a legally and scientifically defensible prediction of surface resource impacts. This is required in order to satisfy the requirements of NEPA and its implementing regulations as well as other applicable state or federal laws and regulations.</p>
21	<p>The language in the Regulations requiring the Operator to describe reasonably foreseeable operations does not preclude the Forest Services from requiring changes in the Plan of Operations limiting the scope or duration of operations. Such changes or "sequenced approval" may be required to ensure that mineral development occurs in a logical and sequential manner, that the approved activities are reasonably incident to mining, and surface resource impacts are minimized.</p>
22	<p>The purpose of a surface use analysis is to provide information, recommendations, and conclusions about the reasonableness and justification for a proposed operation to the authorized approving officer. A surface use analysis is not a substitute for, and should not be confused with, the NEPA disclosure process. The authorized officer can consider it in guiding an interdisciplinary team in the development of alternatives, or in the process of formulating a decision whether to approve a proposed plan of operations (DEIS, pp. 3-3, 3-15).</p>
23.	<p>The SUA is not a decision document and does not impose any economic or environmental burdens. The EIS analysis economic and environmental effects that are pertinent to the issues and scope of the analysis.</p>
24.	<p>The SUA is instrumental in understanding the sideboards to what is considered logical and sequential and reasonably incident to mining. The reasonableness of Alternatives C and D has been addressed in prior responses.</p>
25.	<p>(Also see Responses #18 and #22). The SUA did not challenge the validity of the mining claims. The SUA analyzed the proposed POO and arrived at a set of recommendations based on what would be the next reasonable and customary steps in the development of a mineral deposit given the information available on AIMM's deposit. In doing that, the Forest Service is addressing the need to minimize, where feasible, adverse impacts to surface resources as the project evolves. In addition, it provided information so that the</p>

No.	Response
	<p>environmental analysis could ensure that alternatives and mitigation measures do not materially interfere with mining.</p> <p>The SUA recognizes the validity of claims 3 and 4. (SUA at p.4, 10, 29). The six pages AIMM interprets as criticism of the IBLA's decision simply point out problems with AIMM's reserves information and provide data and analysis not available to the Board. The reason is simply stated:</p> <p style="padding-left: 40px;">“Against this backdrop of considerable uncertainty regarding reserves and mine life, it is prudent for the Forest Service to approach with caution the question of what use of the surface is reasonably incident to mining within a designated wilderness.”(SUA at p.23)</p> <p>The Forest Service attempted to analyze all information pertinent to a surface use analysis as it processes AIMM's 1996 proposed operating plan.</p> <p>AIMM errs when it characterizes Forest Service actions as those that “would continue to impede and bloc access to conduct reasonably defined operations necessary to fully delineate the ore body on validated claims.” The SUA's recommendations specifically delineate the next reasonable steps toward development.</p>
26.	<p>Chapters 1 and 3 of the DEIS, as well as Appendix B, describe the intent of the Forest Service in developing the alternatives. These relevant sections include but are not limited to Purpose and Need, Decisions to be Made, Management Direction and Legal Requirements, and Chapter 3, and Minerals and Geology. Future decisions on development activities will be made in a similar manner, consistent with the geologic data that is obtained through the current Plan of Operations and what will be reasonable and customary regarding mining activity proposed in the context of that information.</p> <p>The Forest Service is presently “exercising caution”, not because it is trying to “get around the IBLA's prior decision”, but because it is analyzing the full array of data, much of which was not available to the Board.</p> <p>We regret that AIMM is speculating on possible future events and prejudging Forest Service actions before there is any justification. The SUA correctly points out the responsibility of both parties and the need to work collaboratively to meet our joint interests (SUA at p. 29).</p>
27.	<p>Alternatives C and D are consistent with the rights granted under the Mining Law as amended, and would not endanger or materially interfere with development of the mineral resource on the Golden Hand Claims. They cannot be interpreted as an attempt to challenge validity because both alternatives provide for approval of mineral development activities and are based on the assumption that the two claims have valid existing rights. They are designed however, to ensure that development activities progress in a logical and sequential manner and the selection of Alternative C as the preferred alternative will not restrict or limit future development methods or activities that may be required.</p> <p>Forest Service authority to manage surface resources lies with the Organic Act, the Surface Resources Act of 1955, and Forest Service mining regulations that together provide the authority to manage minerals-related impacts to surface resources. Within statutory authority, the Forest Service minimizes, where feasible, adverse impacts to surface resources by ensuring that proposed mining activity is reasonably incident to</p>

No.	Response
	mining.
28.	<p>The sequencing of development activities that is provided for in Alternatives C and D is based in part on the customary, logical, and sequential steps in the development of mining deposits. Of added importance is legal requirement that any work conducted within the Wilderness must be confined to development of an established discovery on a mining claim with valid existing rights. The intent of the two alternatives, as described at length in the DEIS and SUA, is to allow reasonable and customary work on a mineral deposit whose known or inferred extent is defined in the IBLA decision and other relevant documents (see page 8 and 9 of the SUA).</p> <p>As noted in the SUA, further drilling and the possible addition of trenches may be future work that is necessary to further develop the mineral deposit (SUA at p. 28)</p>
29.	<p>The description on Page 13 of the SUA of the normal progression of mineral exploration from wide spaced drilling to intensive infill drilling is not applicable to development of the Golden Hand claims. In the case of wide spaced drilling the purpose is to first discover an economic mineral deposit. Then once a deposit has been located, more intensive, close-spaced drilling is conducted to further define the tonnage, grade and milling characteristics of the deposit. In the case of the Golden Hand Claims the existence and location of the deposit is a given based on testimony presented in previous administrative and legal proceedings. In this case, additional work is proposed to develop information regarding tonnage, grade and milling characteristics. Alternatives C and D in the DEIS are designed to allow such development in a logical and sequential way that minimizes surface resource impacts.</p>
30. 31.	<p>The SUA does not propose a systematic grid pattern to the drilling to delineate the Glory Hole deposit. Nowhere does the SUA so state on the pages reference by AIMM (i.e., SUA at p.13-14). The document does indicate that a grid is a pattern “often” employed. It is used as an example of the type of organized approach that is necessary to systematically develop an ore body. He goes on to note later that there is no pattern to AIMM’s proposal that appears to be consistent with AIMM’s goal to “fully delineate the ore body”.</p> <p>AIMM explains that they chose to lay out their drill holes along roads in part to provide sites from which they could drill vertical and inclined holes to pierce the mineralized structure at various points laterally and vertically. AIMM proposes to drill five inclined holes in a northeasterly direction from five sites (14, 15, 16, 17, 24) located east of the structure. Drilling in that direction from those sites means that AIMM is drilling <u>away</u> from the structure rather than <u>toward</u> the structure. It is unlikely that AIMM will “pierce” the structure from the east by drilling eastward. Further, vertical holes drilled from all the sites outside the structure will not “pierce” the structure. Some of the sites west of the structure have other problems in addition to the fact that vertical holes cannot intersect the structure. For example sites 1, 2, 3, 4, and 9 if drilled on the designated inclination and azimuth will not reach the structure for about 1,500 feet, or three times the depth proposed by AIMM. Why AIMM would propose such an action is unclear as is why none of their western holes are proposed to be drilled perpendicular to the strike of the structure as would be accepted exploration practice.</p>
32.	<p>“Use of the surface for trenching is not reasonably incident to mining at this time. Trenching should be deferred until drilling verifies the deposit and confirms that the deposit extends to the surface and subsurface of the areas proposed for trenching. Positive drill results will lead to more accurately locating possible trench locations, establishing trench orientation, and minimizing disturbance to surface resources.” (SUA at p.28).</p>

No.	Response
33.	Mining plans must be flexible to respond to evolving information. That is why the SUA proposes an initial set of holes to be followed later as needed sites change and data evolve. AIMM's characterization is inaccurate that the 1996 plan gives AIMM the flexibility to drill holes in the locations that make the most sense as the information is developed. The reasoning is well documented in the SUA, particularly with regard to the relationship of drill sites to "known" mineralization and the geologic structure (see also Responses #30 and #31). We also note that, when combined with the results of the cutoff grade analysis in the SUA (SUA at p.21), AIMM's plan to proceed from the general to the specific seems to contradict their assertion that they have already discovered an ore body.
34.	Alternatives C and D do not "deny most of AIMMCO's mining activities". The alternatives address the activity that would be reasonable and customary for the next stage of exploration and development without eliminating the possibility of further mining activity. In view of the fact that AIMM plans to spend up to 10-years to drill the 48 drill holes and dig 5 trenches, the Forest Service proposal to begin with the most appropriate 14 sites in the first stage of work is not interference, particularly in view of the problems articulated in the SUA regarding the reliability of estimates on the quality and quantity of ore in the Glory Hole deposit.
35.	36 CFR 228.4 (a)(1)(i) is directed toward vehicular road use that does not require additional construction, reconstruction or maintenance. AIMM's proposed use of the roads outside the wilderness requires additional road reconstruction and maintenance and involves construction and mining equipment as well as commercial hauling of bulk mineral samples for testing.
36.	The issue of jurisdiction was discussed briefly and dismissed from detailed study on Page 1-15 of the DEIS because a) no determination has been made whether a right-of-way exists under RS 2477, and; b) even were such a right-of-way determined to exist, any use, construction, reconstruction, or maintenance of roads that may affect National Forest System lands is subject to regulation by the Forest Service.
37.	The Smith Creek Road (FR 371) and the Pueblo Summit Road (FR 373) are not public roads. Idaho and Valley Counties may claim them under RS 2477, however these claims have not been validated and the counties have no easements from the Forest Service on these roads. The RS-2477 issue is discussed in the DEIS on page 1-15. Both the Pueblo Summit and Smith Creek roads are Forest Service roads and are proposed as access routes to the Golden Hand mine. AIMMCO's proposed plan would increase vehicle use on FR371 by 250 roundtrips from the current estimated 70 roundtrips per year (DEIS, p.3-40). The increased road use would cause additional road impacts such as rutting and erosion, particularly at stream crossings (DEIS, p. 3-40). The proposed plan of operation would use the existing fords of the North Fork of Smith Creek. Increased vehicle traffic at these sites would increase disturbance at these stream crossings and add direct sediment input into the streams (DEIS, p. 3-40).
38.	The EIS shows that Alternatives C and D contain provisions for occupancy that are consistent with the operations proposed and have the additional advantage of minimizing impacts to Wilderness and cultural resources (see DEIS, pp. 3-60 – 3-71, 3-160 – 3-163). As noted in the EIS, (DEIS, p. 3-17) the structure proposed by AIMM for occupancy lies outside the boundaries of the mining claims that have been determined to have valid existing rights. In that case, its modification and use as proposed in the Plan of Operation submitted by AIMM could not be authorized under the 1872 Mining Law as amended.
38b.	The effects of historic facilities on wilderness character and experience has been addressed in the DEIS on pp. 3-58, 3-61. Chapter 2 (DEIS) discloses that the same amount of vehicle trips would be authorized under Alternatives B and C. AIMM stated

No.	Response
	they planned an estimated two trips per day under Alternative B and the FS used that same number of trips for Alternative C. A clarification was made in the FEIS (Errata for p. 3-65) in the second paragraph, third line. The words "evidence of" are deleted from the sentence, "The lack of evidence of human habitation in the Wilderness would benefit the visitor's solitude and sense of remoteness."
39.	<p>The language quoted by AIMM from the Wilderness Act regarding prospecting and gathering of mineral or other resource information does not apply to activities conducted under the Mining Law as amended. Such activities are specifically addressed in Special Provision 4(d)(3) of the Wilderness Act. Special Provision r(d)(2), the section quoted by AIMM, goes on to address mineral survey work conducted by the Bureau of Mines and U.S. Geological Survey. When read in its entirety, and in combination with 4(d)(3) it is clear that it was not intended to address activities authorized under the General Mining Law as amended.</p> <p>As noted in the DEIS, under Alternative B, the structure proposed for occupancy appears to lie outside the boundaries of AIMM's mining claims that have been determined to have valid existing rights. Given the language in the Wilderness Act in section 4(d)(3), modification and use of the bunkhouse cannot be authorized under the 1872 Mining Law as amended.</p> <p>There is much uncertainty over whether claim 2 is valid and, until the claim is found valid and "valid existing rights" are established, there is no reason to assume it is valid. Judge Child declared claim 2 valid in 1989. That decision was reversed by the IBLA in 1992. Judge Winmill in 2002 remanded claim 2 for a validity determination. It is only after "valid existing rights" are confirmed that occupancy can be granted under statute.</p>
40	In relation to the legal basis for use of the Golden Hand bunkhouse see Response # 39. With respect to impacts to cultural resources, the DEIS on pages 3-155-163 acknowledges the management direction found in both the FC-RONR Wilderness Plan, as well as the Payette NF Forest Plan. The DEIS in this section acknowledges that there would be adverse effects to the cultural resource properties at the Golden Hand Mine Site under all alternatives. However, the conclusion of the Forest Cultural Resource Specialist as presented in the DEIS is that performing reconstruction that does not meet standards, as proposed under Alternative B, would have more of an adverse effect on the cultural properties than the other alternatives considered.
41	The question of occupancy of the Golden Hand bunkhouse has been discussed previously in Response #'s 6, 38, and 39. If the bunkhouse did lie on claims with valid existing rights, the Forest cultural resource specialist has concluded that modification of the bunkhouse that did not meet standards, as proposed under Alternative B, would have more of an adverse effect on the cultural properties than the other alternatives considered. Given this situation as well as consideration of impacts to wilderness, the DEIS and SUA (Appendix B) addressed the question of whether offsite occupancy was reasonable. The conclusion as documented in the SUA and DEIS is that offsite occupancy is reasonable considering the proximity to housing opportunities in the Logan Creek and Edwardsburg areas.
42.	As the Table is a summary of AIMM's detailed comments, and the Forest has responded in detail to these comments, there is no need or purpose for an additional response in tabular form. As far as the new alternative proposed by AIMM is concerned, the Forest has concluded that it does not constitute new information or raise new issues that were not considered in the alternatives presented in the DEIS (see response 14).

No.	Response
43.	<p>The use and applicability of the No Action Alternative is discussed in Chapter 2 under Alternative 1 - No Action. As described, there may be instances where all or parts of a plan of operation submitted in compliance with 36 CFR 228A may not be approved.</p> <p>The conclusion based on the analysis as documented in the DEIS, is that all action alternatives would allow AIMM to exercise its rights under the mining laws consistent with the Forest Services obligation to minimize impacts to surface resources including those within the Frank Church River of No Return Wilderness. Alternative C (the Preferred Alternative) as well as Alternative D are designed to ensure that development activities can progress in a logical and sequential manner that will provide the foundation for, and not restrict or limit, future development methods or activities that may be required.</p> <p>The use of manually portable drill rigs would only be required where road construction is restricted within RHCA's, in order to comply with PACFISH/INFISH Standards. This would potentially affect 16 drill locations. This limited use of manually portable drill rigs is a reasonable requirement designed to allow AIMM to obtain the desired geologic information and meet the requirements of PACFISH/INFISH.</p> <p>With respect to trenches, the information developed to date does not indicate that trenching is justified at the present time based on the available geologic information. See the SUA (Appendix B of the DEIS) pages 14 and 15.</p>
44.	<p>The SUA does not question the presence of a mineral deposit on the Golden Hand 3 and 4 claims. Presence of a mineral deposit sufficient to establish valid existing rights is assumed to exist based on the Department of Interior, Interior Board of Land Appeals Decision (see Page 3 of the SUA). The SUA examines AIMM's proposed operations to determine whether those activities are reasonably incident to development of the mineral deposit, to the extent that it is defined by the IBLA decision and other relevant documents. (See SUA on Pages 8 and 9, see also previous comments including #s 22, 23, 24, and 25).</p>
45.	<p>With respect to occupancy, see responses #s 6, 39 and 41.</p>
46.	<p>The applicability and compliance with PACFISH/INFISH standards is discussed in the DEIS (pp. 3-123 to 124). The Forest does not believe that Alternatives B or C are fully compliant with these standards. The record supports the DEIS, which describes PACFISH compliance by alternative (Table 3-1, p. 3-24; p. 3-125; p. S-10). Project effects on PACFISH RMOs are analyzed on pp. 3-111 through 3-126.</p>
47.	<p>The use of the terminology with respect to road reconstruction in the Wilderness is discussed under each alternative in Chapter 2 of the DEIS. Regardless of the terminology used, the Forest believes that the actual work and associated impacts expected is accurately described in the DEIS.</p>
48.	<p>As described in Response # 20, the information presented in a Plan of Operation, although guided by 36 CFR 228.4, must also be adequate to allow the Forest Service to make a legally and scientifically defensible prediction of surface resource impacts. This is required in order to satisfy the requirements of NEPA and its implementing regulations as well as other applicable state or federal laws and regulations. Describing vehicles to be used is a case in point. When access must be upgraded to accommodate vehicles and equipment, specific vehicles and/or specific information about their characteristics (width, length, weights, turning radius) is required in order to predict and analyze environmental impacts. Likewise, it is clearly within Forest Service authority to limit vehicle and equipment size to reduce road construction or reconstruction and associated impacts. This</p>

No.	Response
	is the case with the Golden Hand Operation. Given the list of vehicles provided by AIMM, Forest resource specialists (engineers, surveyors, silviculturists, biologists and others) inspected the roads and trails to the claims and used field surveys, measurements, models, and professional judgment about the amount of widening, tree removal and associated disturbance that would occur. AIMM's assertion that it is not going to widen the roads beyond existing roadbed widths does not provide sufficient information for the purposes of this analysis. Also see response #50.
49.	The Forest has determined that the analysis of impacts discussed in the DEIS remains valid and represents the range of impacts that could occur under action alternatives with vehicular access to the claims. The road improvements and mitigation requirements described in Alternatives C and D are in compliance with the Forest Plan, as amended by PACFISH. See also Response # 35 as it addresses improvement of roads outside the Wilderness.
50.	<p>The proposed POO submitted by AIMM in 1996 contained a general description of the equipment, including a dump truck (size/capacity not specified) to be used in the operation. The Forest Service attempted numerous times to establish the scope of the proposed surface disturbance (including equipment and vehicle information) in order to analyze and disclose potential impacts as required by the National Environmental Policy Act. The general size of equipment proposed for use, and resultant road requirements, appeared to be the key to quantifying these impacts.</p> <ul style="list-style-type: none"> ➤ On 8/30/2000 AIMM responded to a Forest Service request for additional information and provided a list of equipment that included "1 fourteen yard tandem-axle ore truck, make and model unknown at this time." ➤ During a conference call on 8/27/2002, AIMM indicated there was still a need for the 14 cubic yard dump truck. ➤ In a letter dated 9/14/2002 AIMM referred to "10 cubic yard haul trucks." ➤ In a letter sent to AIMM on 11/22/2002 the Forest Service asked AIMM "to clarify the size of this truck. If AIMM cannot yet provide this information, we will use the fourteen yard truck in the analysis." ➤ In a letter dated 12/7/2002 responding to the 11/22/2002 Forest Service request, AIMM stated, "as we indicated in our August 20, 2000 letter, we will use one fourteen-yard tandem-axle ore truck to transport ore from the claims." <p>The Forest Service conducted the analysis based on the use of vehicles and equipment specified by AIMM (see also DEIS, p. 2-2).</p>
51.	AIMM's assertion that it is not going to widen the roads beyond existing roadbed widths does not provide sufficient information to substitute for the Forest engineer's estimate of road widening and associated disturbance that will occur.
52.	The Forest Service did not specify a specific type of vehicle in the DEIS. The only specific requirement for rubber-tired vehicles was that the tire tread width must be limited to less than seven feet (DEIS, p. 2-14).
53.	<p>NEPA and Forest Service policy define social impacts are part of the effects on the human environment that are to be considered in environmental impact statements. In addition, the DEIS addressed this issue on p. 3-60. The Forest Service Manual, Chapter 1950.2, Environmental Policy and Procedures Objectives, subpart 2 provides direction:</p> <ul style="list-style-type: none"> ➤ "Fully consider the impacts of Forest Service proposed actions on the physical, biological, social, and economic aspects of the human environment (40 CFR 1508.14)." <p>The CEQ Regulations for implementing NEPA state in 40 CFR 1508.14, "Human Environment":</p>

No.	Response
	<p>➤ “Human environment” shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See definition of “effects” (Sec. 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”</p> <p>Other comment letters asked for greater analyses of social issues. Most were beyond the scope of the analysis, but effects to the social aspects of the Wilderness issue was clearly “interrelated” and essential to an adequate analysis of the effects on “Wilderness”.</p>
54.	See Responses #s 40 and 41.
55a.	<p>The DEIS quantitatively describes the effects to the <i>processes</i> which affect fish (increased miles of road construction), and qualitatively describes effects to fish (DEIS, pp. 3-112 – 3-123). Despite the use of best scientific and commercial data available, the PNF cannot quantify a specific amount of effect to individual fish or incubating eggs for this action.</p> <p>The DEIS discloses that Smith Creek is a properly functioning stream for most habitat indicators (pp. 3-104 – 3-110). However, the existing condition of Smith Creek concerning roads within RHCAs is considered “Functioning at Risk” (BA in Project Record). Proposed actions construct roads within RHCAs, thereby increasing the density of roads within the project area. Sediment delivery from FR 371 and 373 and its effects to fisheries have been identified for usual Forest uses (Wagoner 2001, Golden Hand BA in Project Record). The proposed project identifies more use than the FS considers as usual (i.e. dump trucks, backhoes and additional vehicle use).</p>
55b.	<p>AIMM believes the road improvements under Alternatives C and D are excessive if one solely considers the sediment model. The need for road improvements is based on a variety of factors. Sediment models provide one outline for viewing effects. The model used in the DEIS, as well as another model used in draft analysis efforts (but incorrectly characterized in AIMM’s comments) both show that Alternative B would cause slight increases in sediment. The model results were only part of the consideration for the need and responsibility for road improvements. The Responsible Official also considered areas where direct sediment delivery would occur to streams from expanded road use.(see ROD). Estimates of use of FR 371 and 373 determined that AIMM’s activities would likely increase the amount of use on these roads from 70 roundtrips per year to 250 roundtrips per year. In addition, in the proposed plan provided by AIMM (1996 operating plan and letters of clarification, DEIS, p. 2-2), AIMM proposed to use a variety of vehicles that do not normally travel the roadway including a 14 cubic yard dump truck.</p>
55c.	<p>Stream morphology at the mouth of Coin Creek includes a depositional area in Beaver Creek. Spawning and rearing chinook salmon and bull trout have been observed in the vicinity and downstream of this depositional area (Project Record). The addition of a potential 5.1 tons of sediment to a spawning and rearing area may have adverse effects to listed species (DEIS, p. 3-111 – 3-116).</p>
56.	<p>There are some indications of a potential for metal contamination at the Golden Hand. See discussion on Pages 3-89 to 3-91. For this reason the risk cannot be dismissed and is higher for alternatives that cause more disturbance that expose potentially acid generating materials.</p>
57.	<p>Criticisms of the DEIS regarding identification of evidence of negative effects to fish (including comments in AIMM’s Fish Report) appeared to be largely unsubstantiated and</p>

No.	Response
	subjective. The record supports the DEIS (analysis of fisheries effects pp. 3-111 – 3-126). The qualitative analysis of fisheries effects in the DEIS is supported by ample citations to relevant scientific literature. The proposed action for Alternative B was not quantified with regard to type and amount of tree removal. We assumed that the effects of the proposed unquantified tree removal within 75 feet of the stream could reduce future recruitment of LWD and shade, and decrease channel complexity and potential habitat, which is substantiated in scientific literature (DEIS, p. 3-111).
58.	The DEIS analyzes the effects of additional sediment on fish and fish habitat (p. 3-112-116). Precise location of sediment delivery from roads, however small, may be adverse to individual listed fish (there are spawning bull trout documented immediately downstream of modeled delivery points in Smith Creek). In the short term, actions could likely adversely affect listed fish, though they will not reduce survival of the species. Instream work and short-term increases in sediment delivery are expected to adversely affect small amounts of habitat and few fish over a limited time frame, and should be offset by the long term, overall reduced sediment delivery as a result of management measures required by Alternatives C and D. Without the management measures, increases in sediment delivery would not be offset and adverse effects would likely extend beyond “short-term”. The USFWS Final BO states: “...the Service expects adverse effects to bull trout to arise from implementation of the actions...” Additional Terms and Conditions from the USFWS beyond the mitigation measures designed into Alternative C are required to minimize adverse effects to listed fish. It remains that adverse effects to listed species are probable from the proposed actions, and are required to be mitigated (BA, Project Record, and Final USFWS BO).
59.	The DEIS describes the effects to the <i>processes</i> which affect fish (volume and percent of flow reduction), and qualitatively describes effects to fish (DEIS, pp. 3-116 – 3-119). The final USFWS BO states: “Take of bull trout in the form of harm could result from withdrawal of water from an unnamed tributary of Coin Creek for operations at the claims sites. Harm could result from decreased flows in Coin Creek, which may reduce habitat amounts and availability...”
59a.	AIMM’s Fish Report stated the DEIS lacked any assessment of the proposed project on Properly Functioning Condition (PFC). The BA assesses PFC for Alternatives A and C (Project Record). The DEIS dropped some of the PFC indicators from further analysis due to difficulty in detecting measurable change (Specialist Report in Project Record).
60.	There are differences between alternatives as discussed in the DEIS (pp. 3-153 to 3-154). These differences are related to the amount of surface disturbance that occurs and the mitigation measures employed to prevent introduction of noxious weed seed.
61.	See Response # 40.
62.	Forest Service policy and procedures on Forest Plan amendments contradict AIMM’s interpretations. Forest Plan amendment significance (36 CFR 219.10(f)) is different than NEPA significance of effects (40 CFR 1508.27). Alternative B would require several Forest Plan amendments because proposed activities would result in specific change in management direction that would violate the Forest Plan Standards and Guidelines in eleven different respects. In the analysis between the DEIS and FEIS, one amendment listed under Alternative B and Alternative C was determined to be unnecessary (FEIS, Errata for pp. 2-8, 3-70). See FSH 1909.15 section 5.32 for definition of significance of Forest Plan amendments.
63.	The analysis as documented in the EIS and Project Record shows that all action alternatives would allow AIMM to exercise its rights under the mining laws consistent with the Forest Services obligation to minimize impacts to surface resources including

No.	Response
	<p>those within the Frank Church River of No Return Wilderness. Alternative C (the Preferred Alternative) is designed to ensure that development activities can progress in a logical and sequential manner that will provide the foundation for, and not restrict or limit, future development methods or activities that may be required.</p> <p>AIMM's suggested alternative is made up of components of the various alternatives presented in the DEIS. For this reason a new alternative in the FEIS is not needed.</p> <p>The preparation of the EIS complies with the National Environmental Policy Act (NEPA) and with Judge Winmill's order. AIMM's right to mine has not in any way been compromised or limited by Alternative C.</p>

Section Three:

Response to Comments By Topic

1. Process

- a. Timeliness
- b. Social Impact Analysis and Civil Rights Impact
- c. Socioeconomics
- d. Sets a Precedence
- e. Cost of Analysis
- f. Claim Purchase
- g. Claim Validity

1a. Timeliness of Process

Letter #135: *It is premature for the Forest Service to press forward with any action alternative at this time. The Forest Service needs to completely revise the DEIS in order to adequately examine the validity of the mining claims, analyze far less intrusive alternatives, study the potential for acid mine drainage from existing and proposed waste rock piles, and complete the required watershed and roads analyses.*

Response: The Record of Decision (ROD) addresses the adequacy of the analysis and documentation in the EIS. Claim validity was addressed in the DEIS p. 1-12. Less intrusive alternatives were described in DEIS Chapter 2. The potential for acid mine drainage was addressed in EIS (pp. 3-89 to 3-95). See comment responses above pertaining to Watershed Analysis (under Forest Plan Compliance) and roads analysis process (under Law and Regulation).

1b. Need for Social Impact Analysis and Civil Rights Impact Analysis

Response: See response in Section One to Letter #6, Comment #11. See also the detailed discussion on Environmental Justice and Payette National Forest responsibilities to federally Recognized Tribes in the Record of Decision (ROD).

1c. Socioeconomics

Letter #95: *"I make most of my yearly income through guiding in the Frank Church Wilderness...I have an economic interest in seeing that nothing occur within the Frank Church that would diminish the Wilderness and watershed values found there....Please do not allow any activity within the FC-RONR Wilderness that will decrease my chance to earn a living. I urge you to choose the non-motorized alternative".*

Letter #97: *"The opening of the mine will stimulate the local economy and provide badly needed jobs."*

Letter #137: *"Alternative D could provide employment for an outfitter...hauling in and out of wilderness tools and supplies."*

Letter #116: *The economic impact on outfitters and guides was not considered.*

Response: This was addressed in the EIS under Non-significant Issues #4: Economics. The comments raised economic effects to a variety of user groups, including AIMM, independent miners, outfitters and guides, and packers. Economic impact analyses usually tracks effects not on individuals but on social or economic groups. For AIMM and independent miners, the effects of implementing a mining alternative would depend on many unknowns including the quality of ore recovered. The only likely effect is that six miners would have employment and income for three to ten summers. Effects could range from positive effects to packers who may be employed under Alternative D, to negative effects from some disruptions to Outfitter and Guide activities in the action alternatives. Most operations of Big Creek Lodge and Outfitters and Elk Springs Outfitters currently take place during the fall hunting season. The proposed action for the mining operation states, “a most likely case would be operations between early July and mid-September before hunting season starts.” Under the action alternatives, if AIMM would choose to operate primarily before September 15, the impact to the two current outfitting operations would be minimal. A number of outfitters have expressed concern about downstream effects to water quality and fisheries. Please refer to the Fisheries Resource section in the DEIS (pp.3-97 to 3-126) and response to fisheries comments for more information on the actual resource effects. Any social or economic effects caused in turn by the minor changes in fish habitat are expected to be indiscernible.

1d. Decision sets precedence

Response: The Golden Hand No’s. 3 and 4 lode mining claims were in existence prior to the creation of the Wilderness and prior to the deadline for establishing mining claims. The issue is about the right of access to exercise existing rights, which the Wilderness Act allows for. The fact that it may be one of the few times access to a mining claim in Wilderness has been requested and granted, it does not set a precedent. Any other proposals that deal with existing rights would be subject to an analysis based on the specific effects of that proposal.

1e. Cost of the analysis

Letter #72: *“...did the private proponent of this awful plan fund your analysis? What was the cost of this analysis?”*

Response: There is no basis for the Forest Service to require a project proponent to fund a NEPA analysis. The approval process for the Golden Hand project is not complete, and may result in appeals and/or litigation, so a final cost cannot be determined, however the cost to the Forest through the release of the FEIS and Record Of Decision (ROD) is estimated to be in excess of \$300,000.

Letter #135: *“The DEIS should add the costs for all monitoring efforts....”*

Response: Monitoring costs and the party responsible for the monitoring is described in Appendix E of the DEIS and the FEIS (Errata). See also response in Section One to Letter #3, Comment #5.

1f. Claim Purchase

Letter #99: *"It has been said that this mine is played out and the developer is simply trying to get the Forest Service to buy its claim to the Golden Hand"*

Letter #18: *"Is he just trying to get the Forest Service to buy him out?"*

Response: Claim purchase was described as a non-significant issue (DEIS, p. 1-12)

1g. Claim Validity

Letter #8: (see also response in Section One under Comment #12);

Letter #121: *"Substantial questions exist on whether any valid ore reserves exist on Golden Hand Mine claims....there needs to be certainty whether valid ore reserves even exist."*

Letter #135: *"The Forest Service should not assume that AIMM has any valid rights in the Wilderness."*

Response: See discussion of non-significant issue: claim validity (DEIS, p. 1-12).

2. Scope of the Operations (Minerals and Geology)

- a. Cyanide Use
- b. Type of Equipment
- c. Use of Walker Millsite
- d. Reclamation and Bonding

2a. Cyanide Use

Letter #16: *"I trust that you are NOT going to allow anyone to do commercial work in the Frank, especially a cyanide leach (sic) system."*

Letter #17: *"...concerned about cyanide use."*

Response: Sulphide ores are generally not amenable to cyanidation. The use of cyanide was not proposed in the plan of operations for the Golden Hand No. 3 and No. 4 Lode Mining Claims and is, therefore, not a component of the NEPA analysis. AIMM has indicated the production milling method would be "gravity plus flotation" (Mashburn 1988). This is clarified in the FEIS (Errata for pp. 3-19, 3-21, 3-22).

2b. Type of Equipment

Letter #122: *"...the agency cannot dictate type/style/brand of equipment."*

Response: The Forest Service did not dictate type/style/brand of equipment. Under the description of Alternative C, a maximum tread width was identified (DEIS, p. 2-14) to provide for safety and minimize resource effects on the existing roadbeds.

2c. Use of Walker Millsite

Letter #135: *"The Forest Service is also violating NEPA by not considering the cumulative effects of the Walker Millsite..."*

Response: The Walker Millsite is an independent millsite with a plan of operations approved in 1990. The Walker Mill is authorized to accept ore from any mine in the area. Processing of the limited quantity of bulk samples (60-140 cubic yards) proposed for removal at the Golden Hand Mine site requires no additional authorization.

2d. Reclamation and Bonding

Letter #135: *"Bonding costs need to be detailed in the DEIS for each alternative."*

Response: The proposed reclamation activities for each alternative are described in the DEIS (Chapter 2) with additional clarification provided in the FEIS (Errata, pp. 2-7, 2-17, 2-23, and Chapter 3 under Minerals and Geology). Preparation of a reclamation bond is an administrative process that takes place after an alternative is selected in the decision, and a final plan of operations developed and approved. Recent experience has shown that reclamation bonds should be reviewed for adequacy during the construction phase of a project, and again when construction is complete. Opportunities for concurrent reclamation may be identified at any time during a project, and bonds may be adjusted accordingly. The final plan of operations for this project will include a requirement that the reclamation bond be reviewed at least annually and adjusted, if necessary.

3. Compliance with Forest Plan and Biological Opinions

- a. PACFISH
- b. Forest Plan Amendments
- c. Biological Opinions on Forest Plan

3a. Compliance with Forest Plan direction from PACFISH

Letter #28: *"Any action is premature without a watershed analysis as required by National Marine Fisheries Service."*

Letter #26: *Amendment to Forest Plan is unacceptable in a watershed supporting trout and steelhead sport fishery, recreational users of wilderness, commercial outfitters who rely on recreational users and fishery.*

Letter #19: *Alternatives B and C don't comply with PACFISH standards and guidelines in the Forest Plan. What methods are used to verify compliance with PACFISH?*

Letters # 8, 135, 19, 123, 26: *Project actions for Alternatives B and C do not comply with the following PACFISH Standards and Guidelines, which are part of the Forest Plan:*

MM1 – Avoid adverse effects from mineral actions.

RF2 – For each existing or planned roads, minimize road and landing locations in RHCAs, complete Watershed Analyses prior to constructing new roads or landings in RHCAs

Response: The fisheries analysis (DEIS, pp. 3-111 to 3-123) identifies actions that have adverse effects to TES fish and fish habitat. The fisheries BA states that Alternative C is *Likely to Adversely Affect* chinook salmon, steelhead, westslope cutthroat trout, and bull trout, critical

habitat for chinook salmon, and proposed critical habitat for bull trout. The BA states that adverse effects stem from sedimentation from road use, construction, and reconstruction; water withdrawal; potential fuels contamination; and disturbance of RMOs within RHCAs (Project Record). Due to these documented adverse effects, project actions are not compliant with PACFISH MM1.

Proposed actions include construction of new roads in RHCAs. A Watershed Analysis has not been completed; therefore these actions are not compliant with PACFISH RF2.

A one-time, site-specific, non-significant amendment to the Forest Plan is provided in the EIS to allow for the proposed activities, which are not compliant with PACFISH Standards and Guidelines and thereby inconsistent with the Forest Plan.

Under Alternative C, new road building in RHCAs would occur on a very small amount of RHCA: approximately 0.2 miles (FEIS, Errata for p. 3-121) on an abandoned roadbed; and requires extensive mitigation measures, including silt fence and hand cutting of vegetation on roadbeds near stream channels. Alternative C would not widen roads (DEIS, p. 2-10, Roads and Access Management section). The Forest Service engaged in consultation with USFWS and NOAA Fisheries under Section 7 of the ESA. Each agency prepared a draft Biological Opinion for this project to address these issues. The USFWS completed a final BO (see ROD, Appendix A).

3b. Forest Plan Amendments

Letter #135 (and others): *Alternative C calls for three Forest Plan amendments. There is no explanation how these can be characterized as "non-significant."*

Response: See FEIS Chapter 2, Forest Plan Amendments, for description of Forest Plan amendments for each alternative. See p. 2-17 for a description of Forest Plan amendments for Alternative C. All of the amendments are described as "one-time, site specific, non-significant amendments that would not change overall Forest Plan goals, objectives, Desired Future Conditions, or associated outputs."

Specifically, Alternative C in the DEIS would make two Forest Plan amendments; for visual quality and for PACFISH direction. Regarding significance, each of the amendments in Alternative C, when evaluated in light of 36 CFR 219.10 (f), and the four factors in the Forest Service Handbook (FSH) 1909.12, section 5.32 (Process to Amend the Forest Plan), is not a significant change. Therefore, individually and collectively, they constitute non-significant amendments to the Forest Plan. Specifically:

a. **Timing.** The Payette is issuing a Revised Forest Plan in mid-2003, and these amendments may or may not be necessary under that new Plan. Taking place under the old 1988 Forest Plan, their timing at the end of the 15-year plan period minimizes their significance.

b. **Location and Size.** The amendments affect a very small area of the National Forest, and a very small area of the land that PACFISH affects (PACFISH applies to portions of five northwestern states), and therefore would have minor scope of effect. They apply only to the Golden Hand Mine project area. The mining development would occur on a total of about 55 acres (plus access roads), which is 0.00002 percent of the 2.3 million acre FC-RONR Wilderness.

c. **Goals, Objectives, and Outputs.** These amendments would affect localized parameters, not Forest-wide. The site-specific amendments would not change overall Forest Plan goals, objectives, Desired Future Conditions, or outputs for visual quality (pp. 1-13 to 14, water quality and fish habitat (pp. 3-125 to 126), and motorized access in Wilderness (DEIS, p. 3-70). They would not alter the long-term relationships between the level of goods and services projected by the Forest Plan. This amendment would change PACFISH Standards and Guidelines MM-1 and RF-2 in a very limited portion of the area affected by PACFISH. The area has been altered by previous mining exploration. This amendment would allow further alteration of the area, but the federal action has extensive provisions for mitigation of mining and road-related effects to RHCAs. Furthermore, the changes apply only to this decision.

d. **Management Prescriptions.** These changes in management prescription only affect the specific situation in the 55 acre mining area and would not apply to other areas within Forest Plan Management Area 26, the Frank Church-River of No Return Wilderness.

The significance of the environmental impacts under NEPA (40 CFR 1508.27) has little relevance to the significance of the amendment under NFMA (36 CFR 219.10 (f)). NEPA significance has to do with the severity of the environmental impact of a project on the environment. NFMA significance has to do with the degree and scale of deviation of an amendment from Forest Plan management direction. Significance of environmental effects is not a required factor in the significance of a Plan amendment. Nor is the sensitive or specific location of the changes in management direction a factor in the amendment significance.

The agency did consider other factors in its determination of non-significance. First, the amendments are made less significant by the fact that the Wilderness Act and the Central Idaho Wilderness Act allow development of valid mining claims, the activity that would trigger the need for the amendments in local Plan direction. The Forest Plan is an implementing vehicle for these two statutes. And second, the mining development that conflicts with Plan direction would last from three to ten years rather than continue indefinitely.

Because the changes are not significant, the agency does not need to adhere to the same procedures as in developing and approving a Forest Plan (36 CFR 219.10 (f) and (g)) as it would for a significant amendment.

After review of the DEIS and the public comments, the Forest Service revisited the need and rationale for each Forest Plan amendment and concluded that under Alternatives B and C, the amendment for inconsistency with the Wilderness Management Plan, was in fact not necessary. As stated (DEIS, p. 3-70), the reason is that the Plan acknowledges, "reasonable access cannot be denied." In Alternatives B and C, the motorized access to the mine is included as reasonable. Modifications included in Alternative C help minimize impacts to the Wilderness and are more consistent with the Plan. Therefore, there is no conflict with the Wilderness Plan, the Forest Plan, and no need for this amendment.

3c. Biological Opinions on Forest Plan

Letters # 8, 135, 5, 123, 121: *Project actions for Alternatives B and C do not comply with the following Biological Opinions:*

- NMFS 1995 (LRMP BO) – "The USFS should complete watershed analyses in Priority Watersheds prior to approving plans of operation for minerals activities outside RHCAs that are likely to adversely affect listed salmon..." (p. 78, 79). "PACFISH requires watershed analysis prior to road-building in RHCAs..." (p. 87)

- *NMFS 1998 (Steelhead BO) – “...[in the MFSR subbasin] ... build new roads only to replace [closed, obliterated] existing roads in RHCAs; do not widen roads, do not open closed and revegetated roads unless necessary to repair human-caused damage to steelhead habitat.” (p. 78, 79)*

Response: The Forest Service recognizes that the previous Biological Opinions (BOs) from NOAA Fisheries contain provisions with which the Forest cannot comply. For this reason, the Forest has reinitiated consultation with NOAA Fisheries on the Payette Forest Plan as part of the request for formal consultation on the Golden Hand Mine. The Forest transmitted the Biological Assessment (BA) for Fisheries to NOAA – Fisheries on March 20, 2003 (letter from Forest Supervisor Mark Madrid to Ken Troyer, NOAA Fisheries). That consultation is intended to specifically address the issues such as those stated in the comment above.

4) Compliance with Laws & Regulations

- a) 1872 Mining Law, Wilderness Act, Endangered Species Act, and Clean Water Act
- b) NFMA
- c) Property rights
- d) FSM (including 7700)
- e) CFR 228 A
- f) RS-2477
- g) State Water Law

4a. Compliance with 1872 Mining Law, Wilderness Act, Endangered Species Act, and Clean Water Act

Letter #143: *“The FS...must make the mine operator and the mining plans to conform to the Forest Plan and America’s laws, the Clean Water Act and the Endangered Species Act.”*

Letter #22: *“..the Forest Plan should not be amended to suit the company’s plans but the Forest Service should amend the plan of operations to conform to the Forest Plan, the Endangered Species Act, and the Clean Water Act.”*

Letter #20: *“..explain why you choose to honor a law 140 years old and ignore the Wilderness Act.”*

Letter #135: *The action alternatives violate the NFMA, NEPA, ESA, and the Wilderness Act.*

Response: The Forest believes it has correctly interpreted its authority and responsibility under the various laws and regulations including the ESA, NFMA, NEPA, the Wilderness Act, and the 1872 Mining Law, as amended. Due to the conflicting interests and direction of the laws, the ultimate interpretation would be up to a Court of Law. See also responses to legal questions in Section Two.

Letter #135: *“Any exploration to determine validity of claims #1, 2, or 8 should also be covered under a separate EIS.”*

Response: The Forest acknowledges that additional environmental analyses will be necessary for proposed activities outside the scope of this analysis and decision. Golden Hand lode mining claim No. 8 has already been determined to have valid existing rights (see DEIS, Chapter 1).

Letter #135: *"The DEIS does not identify the depth to groundwater at the mine site, nor does it include baseline data on groundwater quality."*

Response: Depth to groundwater in mine area is unknown (no wells). Other than the adit water sample, groundwater quality in mine area is unknown but probably better than the adit water.

Letter #135: *"...TES species...Wildlife tress and snags should be left standing...include diameter limits on size of timbers"*

Response: Old growth, mature forest, and snags; and their relationship to wildlife is discussed on p. 3-139 and 3-147 of the DEIS: "Alternative B, C, and D would have little to no effect on stand structure. Old growth condition would not be affected and would continue to meet Forest Plan requirements. We do not believe diameter limits are warranted, because few snags would be removed under any alternative.

4b. Compliance with NFMA

Letter #20: *signing the decision for the FP amendment does not comply with NFMA*

Response: See response under Topic 3b.

4c. Property Rights

Letter #21: *"The only alternative that does not materially interfere with the mining operation is Alternative B."*

Response: Our conclusion based on the analysis as documented in the DEIS, is that all action alternatives would allow AIMM to exercise its rights under the mining laws consistent with the Forest Service obligation to minimize impacts to surface resources including those within the Frank Church River of No Return Wilderness. Alternative C (the Preferred Alternative) is designed to ensure that development activities can progress in a logical and sequential manner that would provide the foundation for, and not restrict or limit, future development methods or activities that may be required.

4d. FSM 7700

Letter #135: *complete the required.... roads analyses.*

Letter #123: *The Forest transportation Rule direction was not followed.*

Response: Roads analysis is basically the process of assessing the past, present, and future conditions of roads on the landscape in order to inform decision-making. The Forest Service Manual (FSM 7700) requires a roads analysis under certain conditions. It also states that roads analysis below the Forest-scale is not automatically required, but may be undertaken at the discretion of the Responsible Official. But when the Responsible Official determines that additional analysis is not needed for a project, the Responsible Official must document the basis for that conclusion (FSM 7712.13c, 12/14/01).

The EIS provides information on the present and intended future condition of roads on the landscape in the Golden Hand Mine area and access corridor to the mine. The DEIS on pp. 3-31 to 47 describes in detail the existing condition. The location and context of this project is unusual in that the abandoned roadbed (now Trail #013) and the old exploration roads on the Golden

Hand mine claims, are essentially the only roads in this south-central portion of the FC-RONR Wilderness. Therefore, to study these roads is to study all the pertinent roads in the landscape. South of the Wilderness boundary, in the Smith Creek and Logan Creek drainages, the Smith Creek Road (FR #371) and Pueblo Summit Road (FR #373) are two of the few main access routes in the area between Edwardsburg and Pueblo Summit Trailhead accessing the trail to the mine site. The DEIS, pp. 3-33 through 3-35 describes and illustrates these roads in detail.

The Responsible Official determined that the analysis of roads inside and outside the Wilderness at the project scale provided the functional equivalent of a separate roads analysis process. The unusual nature of this proposed action is a second factor making the need for a separate roads analysis not applicable in this case. A mining project under the 1872 Mining Laws and the 36 CFR 228 A Regulations provides a narrow decision space and fewer options for road reconstruction, closures, obliteration, and mitigation than would a project that encompasses most of a watershed. In this specific situation, the EIS contained a full analysis of project-area roads and proposed extensive road improvements of classified roads at the beginning of the project as well as full reclamation of temporary roads following the end of the project. For these reasons, a separate roads analysis would be repetitive and unnecessary.

4e. Compliance with CFR 228 A

Letters # 113, 122, 21: *“Alternative B is the only viable alternative.”*

Response: Alternatives C and D are consistent with law, regulation and policy regarding the development of alternatives for proposals submitted in accordance with 36 CFR 228 A. The different exploration methods and techniques analyzed in Alternatives C and D were developed in order to minimize adverse impacts to surface resources consistent with the right to develop the mineral resources under the 1872 Mining Law as amended. See discussions in Chapter 1, **Purpose and Need**, Chapter 3 and 4 under **Minerals and Geology**, and in Appendix B in **Introduction, Analysis of Plan Elements, and Findings and Recommendations**. Additional response is provided in Section Two.

Letter #113: *“Alternative B is logical and meets standard mining practices...Alternative C is in direct conflict with the...Surface Resource Act of 1955. Alternative D is not prudent...”*

Response: Our conclusion based on the analysis as documented in the DEIS, is that all action alternatives would allow AIMM to exercise its rights under the mining laws consistent with the Forest Service obligation to minimize impacts to surface resources, including those within the FC-RONR Wilderness. Alternative C (the Preferred Alternative) is designed to ensure that development activities can progress in a logical and sequential manner that would provide the foundation for, and not restrict or limit, future development methods or activities that may be required.

Letter #135: *“The Forest Service is authorized to limit mining plan approval to only the very first initial stage.”*

Response: The Forest acknowledges its responsibilities and authorities under the Mining Law as well as those under the 1964 Wilderness Act, Central Idaho Wilderness Act, Forest Plan, and regulation at 36 CFR 228 A.

4f. Compliance with RS-2477

Letter #113: “...the Forest Service has no jurisdiction.”

Letter # 135: “RS2477 claims are not relevant.”

Letter #21

Response: The issue of jurisdiction was discussed briefly and dismissed from detailed study on Page 1-15 of the DEIS because a) no determination has been made whether a right-of-way exists under RS 2477, and; b) even were such a right-of-way determined to exist, any use, construction, reconstruction, or maintenance of roads that may affect National Forest System Lands is subject to regulation by the Forest Service. Additional response to this topic is provided in Section One under Letters #6 and #7.

4g. State Water Law

Letter # 122: “As the agency is well aware of, water is under the jurisdiction of the State of Idaho, rather than the US Forest Service.”

Response: The Forest agrees insofar as appropriation of water is regulated by State statute. However, occupancy of National Forest System lands for the purpose of diversion and/or transmission of appropriated water is authorized under Federal regulation.

5. Coordination with Local and State Governments and Tribes

Comments: Comments on coordination with the Idaho County and the Valley County Board of County Commissioners and with the Nez Perce Tribe and Shoshone-Bannock Tribe.

Response: See responses to Letters #6, #7, and #8 in Section One.

6. Alternatives

- a. Preference
- b. Range

6a. Alternative preference

Comments: More than 1,200 comment letters were received on the DEIS. Of the 142 original or “non-form” comments received from agencies, organizations, governments, and individuals, approximately 11 favored Alternative B, while the rest favored Alternative D. The remainder of the comments were personally sent email form letters (some with slight variations). All the form comments received were in favor of Alternative D.

Specific comments on the alternative from State and local government, Tribes, and other agencies can be viewed in the reproduced letters preceding Section One of the Response to Comments.

Response: The Forest Service acknowledges the preference of each commenter.

6b. Range of Alternatives

Overview of Comments: Comments on the DEIS requested the analysis or more comprehensive analysis of four additional alternatives and one existing alternative (Alternatives B1, E, H, I, and J in the ROD). These alternatives were reviewed but were not analyzed in depth because they did not add to the range of alternatives considered in the DEIS; address different issues than previously addressed; or substantively add to the disclosure of effects displayed in the DEIS. Specific alternatives and the response clarifying why they were eliminated are discussed below. Rationale for elimination of Alternative B1 is discussed specifically in Section Two.

Letter #4, Comment #1: *Consider an alternative which will provide allowance of motorized access on existing roadbed within the Frank Church River of No Return Wilderness portion of the project area utilizing smaller-scale motorized equipment, which would not require road widening.*

Response: See response under Section One to Letter #4.

Letter #8, Comment #13: *Provide a more detailed analysis of an alternative to provide access by helicopter.*

Response: See response under Section One to Letter #8.

Letter #135, Comment #13: *Consider Alternative I to limit all mineral development to underground activity through the existing adits to allow continued delineation of the ore body through the east and west drifts without severe surface effects of road building and drilling within RHCAs.*

Response: Based on the reasonable development scenario outlined in the SUA (DEIS, Appendix B) a reasonable development scenario still included the use of drilling equipment. Limiting development activities solely to underground work would not achieve the pre-development objectives and was not considered reasonable by the Forest Service.

Letter #135: *Consider Alternative H which would limit all drilling to the area within the boundaries of the 105' x 210' inferred ore deposit as shown within the DEIS.*

Response: The difference in environmental effects between Alternative H and Alternative D would be too negligible to warrant further study in the FEIS.

Letter #21: *"...Alternative C cannot be considered until the U.S. Forest Service removes the protest to the water right permit at Logan Creek."*

Response: There is currently an approved domestic water right owned by Jack Walker and servicing the Walker Millsite. The protest referred to is related to an application for a water right for the purposes of power generation and mining (milling). The Forest Service will continue to protest the application until the applicant applies for and receives a permit from the Federal Energy Regulatory Commission.

Letter #135: *"Any proposed disturbance to the Wilderness outside the deposit cannot be authorized."*

Response: Our conclusion based on the analysis as documented in the EIS, is that Alternatives C and D would be consistent with the Forest Service's obligation to minimize impacts to surface resources in the FC-RONR Wilderness, while allowing AIMM to exercise its rights under the mining laws.

7. Occupancy

- a. Protection from theft
- b. Location

7a. Protection from theft

Comment: *Occupancy is necessary for protection of property from theft and vandalism.*

Response: See response to Letter #6, Comment #9 in Section One.

7b. Location

Comment: *Numerous comments on the need for occupancy and reasonable locations for the occupancy.*

Response: The EIS shows that Alternatives C and D contain provisions for occupancy that are consistent with the operations proposed and have the additional advantage of minimizing impacts to the Wilderness and Cultural resources (see DEIS, pp.3-60 to 3-71, and 3-160 to 3-163). As noted in the EIS (DEIS, p.3-17), the structure proposed by AIMM for occupancy lies outside the boundaries of the mining claims that have been determined to have valid existing rights. In that case, its modification and use as proposed in the Plan of Operation submitted by AIMM could not be authorized under the 1872 Mining Law as amended.

Also see discussion on occupancy in Section Two.

8. Roads and Access Management

Letter #28: *"Roads are not required to access the site, and should not be built in Riparian Habitat Conservation Areas or in Wilderness."*

Letter #45: *"A mining claim in the Wilderness Area does not confer a right for road access."*

Response: The entire analysis in the EIS focused on the need and effects of motorized and non-motorized access.

Letter #135: *"The DEIS needs to map the proposed trails (accessing drill sites 1-8, 29-31) and analyze the impacts..."*

Response: Access to drill sites 1-8 and 29-31 is discussed on p. 14 in the DEIS.

Letter #135: *"...should the FS allow road construction...the monitoring program should include checking mileage weekly...Any overuse should be grounds for revoking the permit."*

Response: Access is discussed on p. 2-10 of the DEIS. We feel that the measures outlined there are sufficient to properly manage proposed access.

Letter #135: *"...the claims occur on a slope rated at a moderate to high risk to road cut failures..."*

Response: See response to comment under section three, Topic #10, and Section Three, Topic #12h. This was discussed in the DEIS, p. 1-15, and in the Roads and Access Management section of Chapter 3. Additional information is provided in the fisheries BA and in the Project Record.

9. Minerals and Geology

All Minerals and Geology comments were answered under other topics.

10. Wilderness Resource

Letter #45: *"Mining has no place within wilderness and is inconsistent with the rationale and intent for designation of wilderness areas."*

Response: The Central Idaho Wilderness Act and the Wilderness Act allow for development of mineral resources on mining claims where valid existing rights have been established (see discussion in DEIS on pp. 1-5, 1-15, 1-16, 3-4, 3-51, 3-52).

Letter #135: *Alternative C has a high effect on wilderness character and experience.*

Response: Alternative C has substantially less effects when compared with Alternative B (see DEIS pp. 3-49 – 3-71).

Letter #135: *The DEIS failed to analyze impacts of ore trucks on recreational pack strings along Big Creek road.*

Response: The DEIS addressed this issue to an extent in Chapter 1, p. 13, under Non-significant Issue #6, Recreation. Additional wording has been added to the FEIS (Errata for p.1-13) to clarify this issue. Additionally, approximately 250 vehicle round trips would be added to the existing use between the Walker Millsite and Pueblo Summit Trailhead per year over a 10-year period. This would be the equivalent of approximately two round trips per day of pickup trucks, and one round trip per year for each of the larger equipment (bulldozer, backhoe, road grader, drill, compressor, and 14-yard tandem axle truck). There could be some disruption of pack strings, bikers, and other recreationists traveling along these roads; however, these impacts would be sporadic and difficult to quantify.

Letter #135: *Noise levels will be a major effect on the Wilderness character in the area and were not addressed.*

Response: The DEIS disclosed the presence versus absence, and amount of noise from motorized / mechanized use throughout the Wilderness character and Wilderness experience section (see Wilderness Resource section). Actual decibel levels were not measured because no standard protocol is available stating acceptable noise levels of motorized equipment in Wilderness.

Letter #135 (and others): *Use of non-motorized/non-mechanized tools was not considered.*

Response: The use of non-motorized/non-mechanized tools off-claim was discussed by Interdisciplinary Team members and documented in the Project Record. The DEIS analyzed a range of alternatives, which includes the use of hand tools in Alternative D (see DEIS, pp. 2-20 and 2-21 under Access and Road Maintenance, Vehicles and Equipment, Work Crew and Housing). In addition, this issue has been clarified in the FEIS (Errata for p. 2-20) under Access and Road Maintenance, by adding the statement that all trail clearing in the Wilderness off claim would be done by hand *using non-motorized non-mechanized tools*.

Letter #135: *Interpretation for wilderness users should be provided (ICL p. 48-49).*

Response: Pages 3-65 and 3-68 of the DEIS addressed the installation of an interpretive display at Pueblo Summit Trailhead. The additional comments suggesting public feedback opportunities, information on the Payette National Forest website, tours of the site, and public access are noted, and are appropriate for further agency consideration during project implementation.

Letters # 59, 60, 47, 28, 15, 121: *The project raises questions about incompatibility with Wilderness.*

Response: We acknowledge your comments about the incompatibility of the project with the Wilderness. The effects to Wilderness Character and Wilderness Experience were primary issues in the EIS (See DEIS, pp. 3-49 to 3-71).

Letters # 59, 60, 28, 29): *Under Alternative D, trails should not be widened to accommodate more traffic than presently uses the road*

Response: Under Alternative D, all trails would continue to be maintained to Wilderness trail standards (see DEIS, pp. 3-55 to 3-56). No tread widening would occur on FS Trail #013 or on other abandoned roadbeds.

Letter #121: *Do not construct roads in Wilderness.*

Response: We acknowledge your comments. The effects of roads in the Wilderness were discussed in the DEIS throughout the Wilderness Resource section, particularly on pp. 3-60 to 3-63.

Letters #136, 125, 121: *Contradicts and threatens the spirit of the Wilderness and preservation of Wilderness Character and Experience.*

Response: We acknowledge your comments. Effects to wilderness were addressed in the DEIS throughout the Wilderness Resource section (pp. 3-49 to 3-71).

Letter #77: *Solitude and peace are recognized as important qualities.*

Response: Effects to solitude have been addressed in the Wilderness Resource section, specifically on DEIS pages 3-60, 3-62, 3-64, 3-65, 3-67, and 3-68.

11. Soil and Water Resources

Letter #135: *"We have concerns regarding inadequate testing for acid mine drainage from the existing and future waste rock piles at the Golden Hand and Werdenhoff Mines."*

Response: We have clarified this in the FEIS (Errata pp. 3-21, 3-43, 3-46, and 3-90).

Letter #135: *"DEIS fails to consider cumulative effects of Walker Millsite. Water quality monitoring mentioned in the DEIS needs to be conducted for the Walker Millsite."*

Response: See Section One, Comment #1.

Letter #135: *"All uses must conform to antidegradation laws and baselines should be maintained. The FS should work with IDEQ to set a beneficial use program..."*

Response: See response to comments Section One, Letter #1, Comments #6, 7. Compliance with antidegradation laws is clarified in the FEIS, Errata for p. 3-93.

Letter #135: *"DEIS needs to address hazardous materials, air pollution and fire management."*

Response: These topics were covered in various areas in the DEIS including pp. 1-12, 2-6, 2-14, 2-16, 2-21, and Appendix D. See also response to comments in Section One, the fisheries BA, and the Record of Decision.

12. Fisheries Resource

12a. Letter # 135: *"The FS must submit a BA, USFWS and NMFS must approve with a "no jeopardy" finding and an incidental takings permit should be allowed."*

Response: The Payette National Forest submitted a BA to the appropriate regulatory agencies (Project Record). Regulatory agency findings ("jeopardy") on the BA, and incidental takings

permits are at the discretion of the USFWS and NOAA Fisheries, and are not within the influence of the Forest Service.

12b. Letters # 8, 26, 121: *The DEIS contains inadequate fish data to quantify project impacts, particularly from sediment. There is no quantifiable information to describe natural variation in fish populations, fish habitat, and water quality on a temporal basis. The analysis has not quantified what effect increased sediment would have on critical life stages, temporally or spatially, of three threatened fish species.*

Response: The fisheries analysis relies on elements such as literature, quantitative habitat survey and inventory data, maps and aerial photographs, scientific publications, biological assessments and opinions, effects analysis methodology computer models, consultation, peer review, public review, and line officer review.

The analysis uses both quantitative and qualitative methods. Quantitative analysis is only appropriate if the inputs and coefficients are reliable, and the output results are measurable, predictable, repeatable, and therefore meaningful. Qualitative analysis is appropriate when they are not. Professional judgment is the appropriate way to determine the analysis that best fits the situation. See the DEIS (pp. 3-111 through 3-126) for effects analysis in terms of five quantifiable indicators: large woody debris, fine sediment, stream flow, chemical contamination, and road density and location. See Fisheries Specialist Report in the Project Record for more information.

The DEIS quantitatively describes the effects to the *processes* that affect fish (for instance, sediment modeling and miles of road construction), and qualitatively describes effects to fish (DEIS, pp. 3-112 – 3-123). Despite the use of best scientific and commercial data available, the PNF cannot quantify a specific amount of incidental take of individual fish or incubating eggs for this action. The final BO from the USFWS states that it is not possible to quantify take (defined as “to harm, harass, pursue, hunt, shoot, wound, kill trap, capture, or collect) because there is not enough precise information about densities of fish, and the presence of fish is likely to vary over the season and from year to year.

Overall, because of improvements to existing roads, modeled sediment input to Big Creek should decrease from existing levels (DEIS, p. 3-87). The short-term impacts associated with road maintenance should be offset by the long-term benefits of reduced sediment delivery. The proposed road maintenance measures and mitigation measures designed into the project should result in a net reduction in sediment delivery to the Big Creek watershed, and thereby improve stream functions.

12c. Letters # 8, 121: *Alternative C will adversely impact treaty-reserved fisheries resources and is not acceptable. It is in conflict with the ESA, regional fish recovery efforts, stock restoration programs, and maintaining Tribal trust responsibilities.*

Response: The DEIS (pp. 3-111 -3-126) and BA (Project Record) acknowledge that Alternative C could adversely affect fish. The action has been designed to significantly reduce risks of these adverse effects. Payette National Forest responsibilities to Federally recognized Tribes are discussed in the DEIS (pp. 1-18, 3-156 - 3-161).

The Forest submitted BAs on Alternative C, the preferred alternative, to the USFWS and NOAA Fisheries, and has received a final BO from the USFWS in accordance with ESA procedures (Project Record). The final BO provides non-discretionary reasonable and prudent measures, with implementing terms and conditions, designed to minimize adverse effects and incidental take.

Alternative C is consistent with the specific commitments and primary objectives of the regional Basinwide Salmon Recovery Strategy. While the preferred alternative does not necessarily contribute directly to salmon recovery, the proposed mitigation measures would result in a net reduction in sediment delivery to the Big Creek watershed, and thereby improve stream functions.

12d. Letters # 8, 121: *Cumulative effects of stream sedimentation have not been adequately analyzed because they do not take into account accessing mining claims No's. 1 and 2 and effects to mainstem Big Creek.*

Response: Without a more specific proposal for the work on claims No.1 and No.2, it was difficult to qualitatively describe the effects. The three additional mineral operations (described in the DEIS in Appendix A, p. A-4), include protective measures to minimize sediment and chemical spills, and were determined *Not Likely to Adversely Affect* in Biological Assessments of their ongoing activities (Wagoner 2001, Faurot 2002). We believe the cumulative effects descriptions on pages 3-94 and 3-125 and Appendix A of the DEIS give a sufficient description of potential cumulative effects. In addition, each resource area addressed cumulative effects to that resource over the cumulative effects analysis area (DEIS, p. 3-124). In addition, the BA (see Project Record) provides an assessment of cumulative and combined effects on fisheries, including Interrelated and Interdependent Actions.

12e. Letters # 8, 11, 26, 45, 106, 121: *The project would affect TES bull trout, chinook salmon, steelhead, and westslope cutthroat trout that occupy the waters downstream of the site, and the fisheries that they support.*

Response: The effects to listed fish species from the alternatives are described in the Fisheries Resource section of the EIS. Background information and additional descriptions are provided in the Biological Assessment (BA) and Fisheries Specialist Report in the Project Record. Overall, because of improvements to existing roads, modeled sediment input to Big Creek is decreased from existing levels (DEIS, p. 3-87). The short-term impacts associated with road maintenance will be offset by the long-term benefits of reduced sediment delivery. The proposed road maintenance measures and mitigation measures designed into the project, should result in a net reduction in sediment delivery to the Big Creek watershed, and thereby improve stream functions. The final Biological Opinion (BO) from the USFWS states (p. 45 and 50): "Although the Service expects adverse effects... to arise from implementation of the actions, we do not expect them to be great enough to noticeably reduce numbers locally or in the Salmon River watershed... Effects are expected to be localized".

12f. Letters # 8, 121: *Transport and storage of toxic chemicals, fuels and mining chemicals, could find their way into fish bearing streams and have toxic effects.*

Response: The operator is required to submit a document similar to a SPCC Plan. All fuel and other potentially toxic materials are required to be stored in containment. Fueling of

vehicles/equipment must take place outside of RHCA's. Toxic effects of fuels and chemicals are analyzed in the DEIS (pp. 3-119-120). The final BO states that the Payette National Forest has designed the project with extensive conservation measures to reduce the effects from release of toxic materials. These include avoidance measures as well as provisions for response in the event of an accidental release of hazardous materials.

12g. Letters # 19, 121: *How will fish and fish habitat be monitored? What methods are required to "verify compliance" with PACFISH standards and guidelines?*

Response: A revised Fish Monitoring Plan has been added to the FEIS that responds to methods of fish and fish habitat monitoring (See FEIS Errata, Appendix E). These methods were developed in conjunction with NOAA Fisheries and the USFWS, and appear in the USFWS final BO (see ROD, Appendix A).

12h. Letters # 135, 123: *Effects of road density on threatened fish cannot be mitigated or justified.*

Response: Project actions incorporate extensive road-related mitigation measures and BMPs (DEIS, pp. 3-31- 3-47, and Appendix D). Modeled effects of these measures result in an overall decrease of sediment input to the Big Creek watershed. The short-term effects of road construction are offset by the modeled long-term benefits of reduced sediment delivery (DEIS p. 3-87). In addition, note the discussion under cumulative effects in the Fisheries Resource section (p. 3-125) that states: "In the Upper Big Creek Watershed...the effects of these actions in combination with Alternative C or Alternative D would be cumulatively beneficial to listed and MIS fish species."

12i. Letters # 135, 123: *Forest Transportation System Rule not followed, a required Roads Analysis has not been completed.*

Response: The site-specific analysis in the DEIS regarding effects to listed fish species from mining operations and RHCA roads (DEIS pp.3-111 – 3-125), together with the analysis provided in the BA and BO for this project, the watershed BA for Ongoing Actions in the MFSR (Wagoner 2001), and the roads data already collected towards a Roads Analysis (Project Record), provide the components required of a Roads Analysis regarding effects to listed fish species and their habitat. Further mitigation resulting from a Roads Analysis would not be anticipated. Refer to Topic 4. See the Record of Decision (ROD) for further discussion of the Roads Analysis.

12j. Letter #19: *The description of flow diversion of Coin Creek for mining operations was confusing. How much diversion will be allowed? How will this be monitored? Is "10% of low flow" measured on Coin Creek or on its unnamed tributary?*

Response: The DEIS has a typographical error on p. 3-119, it stated "0.4" instead of "0.04" cfs. The correct allowed diversion rate is "0.04 cfs". A water quantity monitoring plan has been added to the FEIS that describes how and where this activity will be monitored (see Errata, Appendix E).

12k. Letter #135: *Cumulative effects of water use on TES fish and wildlife species needs to be fully accounted for in the DEIS.*

Response: Appendix A of the DEIS summarizes known activities contributing to cumulative effects. In addition, each resource area addressed cumulative effects to that resource over the cumulative effects analysis area (DEIS p. 3-124). The BA (see Project Record) also provides an assessment of cumulative and combined effects, including Interrelated and Interdependent Actions.

12l. Letter 135: *Allowing summertime withdrawals of 10% of the flow will reduce fish habitat by increasing stream temperatures.*

Response: The DEIS dropped temperature and other Properly Functioning Condition (PFC) indicators from further analysis due to difficulty in detecting measurable change (Project Record).

APPENDIX I. PUBLIC INVOLVEMENT

APPENDIX I

PUBLIC INVOLVEMENT

This appendix includes a summary of the public involvement efforts, and a list of all individuals, agencies, and organizations receiving a copy of this Final Environmental Impact Statement (FEIS).

Public Involvement Summary

Since the release of the Draft EIS on March 7, 2003, the following efforts have been made to involve the public, Federal, State, County, local, and Tribal governments, organizations, and other interested parties:

- Public meeting in McCall, Idaho (March 7th, 2003)
- Public meeting in Boise, Idaho (March 8th, 2003)
- Meeting with members of the Nez Perce Tribe, Lapwai, Idaho (April 16th, 2003)

The Payette National Forest received more than 1,200 written communications on the DEIS. Approximately 142 of the letters included specific, personalized comments from agencies, organizations, governments, and individuals. More than 1,050 communications were electronic variations of the same form letter. Comments received are made part of the Project Record and are available for public review pursuant to the Freedom of Information Act.

A complete detail of meetings, telephone calls, written correspondence, and other public involvement communications are documented in the Project Record.

List of those Receiving the FEIS

The below individuals, agencies, and organizations received a hard copy of the FEIS, however, there are also a number of individuals who will access the FEIS on the Internet—these interested parties are not listed.

Individuals

Dr. John Hendee
Becky Johnstone
Stan Bonney
Dennis Baird
Jack Williams
Jack Walker
Jim Holmes
John Lewinski
Paul Moyer
Tom Blanchard

Peter Zadis
C. Edward Bottum
Sue Neider
Dave and Sheila Mills
Barry Dow
Paul and Karen Kucera
Sarah Petzak Lynch and Quintin Lynch
Matthew Yost
Dondi Dawley
Curt Chang
Paul Santini
Chet Grimsley
Tim Hull
Douglas Fagerness
Amy Frazier
Lois Van Hoover
Gina Bonaminio

Businesses and Organizations

Alliance for Wild Rockies
The Ecology Center
Idaho Conservation League
Idaho Rivers United
Idaho Sporting Congress
The Wilderness Society
Kettle Range Conservation Group
Association of Logging Contractors
Advocates for the West
Western Mining Action Project
Mineral Policy Center
Mountain Travel Sobek
Solitude River Trips
Oars Dorries, Inc.
Idaho Outfitters and Guides Association
Advocates for the West
Earth Justice
Kettle Range Conservation Group
Givens Pursley

City, State, County, and Tribal Officials, Agencies, or Governments

Idaho Department of Lands
Idaho Department of Fish & Game
Idaho Department of Parks and Recreation
Idaho Department of Water Resources
Southwest Idaho Division of Environmental Quality
Valley County Commissioners
Idaho County Commissioners
Nez Perce Tribal Executive Committee
Nez Perce Tribe Water Resources Division

Nez Perce Tribe Program Manager- Dave Johnson
Shoshone Bannock Tribe

Federal Agencies

Advisory Council on Historic Preservation

Agriculture, U.S. Department of:

Forest Service

Director, Environmental Coordination

Intermountain Regional Office

Boise National Forest

Office of General Counsel

National Agricultural Library

Natural Resource Conservation Service

Commerce, U.S. Department of:

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

Environmental Protection Agency

Interior, U.S. Department of:

Bureau of Land Management

Office of Environmental Policy and Compliance

U.S. Fish and Wildlife

National Park Service

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